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ON

THE INTERPRETATION OF STATUTES.

ON

THE INTERPRETATION

OF

STATUTES.

BY

SIR PETER BENSON MAXWELL,
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PREFACE.

As two important books on the Interpretation of Statutes are already in the hands of the legal profession, some apology may seem required for the following pages. But as more than a quarter of a century has elapsed since the last edition of the work of Sir Fortunatus Dwarris was published, and the treatise of the American jurist, Mr. Sedgwick, is based in great measure on American decisions, which, however valuable, are not actually authoritative in this country; it has been thought that such a work as the present would not be inopportune. Its object is to present in some order the leading principles which govern our Courts in the interpretation of statutes, with illustrations of their application selected as much as possible from recent decisions, and in sufficient number to explain and give precision to their meaning and scope; in the hope that it may be useful not

only to the legal practitioner, but to the numerous unprofessional authorities, such as justices of the peace, local boards, commissioners and others, on whom the task of construing statutes is imposed with increasing frequency.

STANHOPE GARDENS,
May, 1875.

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ON THE

INTERPRETATION OF STATUTES.

CHAPTER I.

SECTION I.—INTRODUCTORY.

STATUTE law is the will of the Legislature; and the object of all judicial interpretation of it is to determine what intention is either expressly or by implication conveyed by the language used, so far as it is necessary for the purpose of determining whether a particular case or state of facts which is presented to the interpreter falls within it. When the intention is expressed, the task is one simply of verbal construction; but when, as occasionally happens, the statute expresses no intention on a question to which it gives rise, and on which some intention must necessarily be imputed to the Legislature, the interpreter has to determine it by inference grounded on legal principles. The Act, for instance, which imposes a penalty, recoverable summarily, on every tradesman, labourer, and other person who carries on his worldly

calling on a Sunday, would give rise to a question of the former kind, when it had to be determined whether a particular person charged with the offence fell within the classes of persons comprised in the prohibition. But two other questions arise out of the prohibition: Is the offender indictable as well as punishable summarily? and, Is the validity of a contract entered into in contravention of the Act, affected by it? On these corollaries or necessary inferences from its enactment the Legislature is silent, and as it must nevertheless be conclusively presumed to have entertained some intention respecting them, the interpreter is bound to determine what it was.

The subject of the interpretation of a statute seems thus to fall under two general heads: what are the principles which govern the construction of the language of an Act of Parliament? and next, what are those which guide the interpreter in gathering the intention on those incidental points on which the Legislature is presumed to have entertained one, but on which it has remained silent?

SECTION II.—LITERAL CONSTRUCTION.

The first and most important rule of construction is, that it is to be assumed in the first instance, that the words and phrases are used in their technical meaning if they have acquired one, and in their popular meaning if they have not, and that the phrases and sen-

tences are to be construed according to the rules of grammar; and from this presumption it is not allowable to depart, unless it appears, upon an examination of the rest of the law to which the passage under consideration belongs, that they were used in a different sense (*a*).

When the language is free from ambiguity, the task of interpretation can, indeed, hardly be said to arise. It is not allowable, says Vattel, to interpret what has no need of interpretation (*b*). Absoluta sententia expositore non eget (*c*). When the language is free from doubt, it best declares, without more, the intention of the lawgiver, and is decisive of it (*d*). The Legislature, in such a case, must be intended to mean what it has plainly expressed, and consequently there is no room for construction (*e*). The suggested construction would be a departure from the meaning. It matters

(*a*) See Cull *v.* Austin, LR. 7 CP. 234; R. *v.* Castro, LR. 9 QB. 360, Bac. Ab. Statute, I. 2; Warburton *v.* Loveland, Huds. & Br. 648; Becke *v.* Smith, 2 M. & W. 191; Everett *v.* Wells, 2 M. & Gr. 269; R. *v.* Pease, 4 B. & Ad. 41; McDougal *v.* Paterson, 11 CB. 755, 2 L. M. & P. 681; Mallan *v.* May, 13 M. & W. 511; Mattison *v.* Hart, 14 CB. 385, *per* Lord Wensleydale in Grey *v.* Pearson, 6 H. L. 106, 26 LJ. Ch. 481, and Abbott *v.* Middleton, 7 H. L. 114, 28 LJ. Ch. 110; R. *v.* Millis, 10 Cl. & F. 749, *per* Lord Brougham.

(*b*) Law of N., b. 2, s. 263.

(*c*) 2 Inst. 533.

(*d*) *Per* Buller J. in R. *v.* Hodnett, TR. 96; The Sussex Peerage, 11 Cl. & F. 143; U. S. *v.* Hartwell, 6 Wallace, 395.

(*e*) *Per* Parke J. in R. *v.* Banbury, 1 A. & E. 142; *per* Cur. in Fisher *v.* Bright, 2 Cranch, 399.

[illegible]

[illegible]

(a) *Per* Lord Campbell in [illegible] v. Skeem, 28 LJ. M[illegible] *per* Pollock C. B. in Miller v. Salomons, 7 Ex. 475, 21 LJ. Ex. 197; *per* Lord Brougham in Gwynne v. Burnell, 6 Bing. N. 559.

(b) Nolly v. Buck, 8 B. & C. 164.

(c) *Per* Cur. in Dean v. Reid, 10 Peters, 524.

(d) The Ornamental Woodwork Co. v. Brown, 2 H. & C. [illegible] *per* Martin B. and Bramwell B. in The [illegible] Commissioners, 6 A. & E. [illegible] Infin v. Yates, 5 Man. & [illegible] *per* Erskine J.; May v. [illegible]

[illegible] v. Staffordshire, 12 East, [illegible] *per* Lord Ellenborough; R. v. Bachem, 1 TR. 100, *per* Lord Mansfield; Miller v. Salomons, 7 Ex. 475, *per* Pollock C. B.

able, but to expound it as it stands, according to the plain (or real) sense of the words (*a*).

Though vested rights are divested, and acts which were perfectly lawful when done, are subsequently made unlawful by a statute, those who have to interpret the law must give effect to it (*b*). And they are bound to do this even when they suspect or conjecture that the language does not faithfully express what was the real intention of the Legislature when it passed the Act, or would have been its intention if the specific case had been proposed to it. "It may have "been an oversight in the framers of the Act," says Parke, B., in one case, "but we must construe it "according to its plain and obvious meaning" (*c*). "Our decision," says Lord Tenterden, in another (*d*), "may, in this particular case, operate to defeat the "object of the Act; but it is better to abide by this "consequence than to put upon it a construction not "warranted by the words of the Act, in order to give "effect to what we may suppose to have been the "intention of the Legislature." "The Act," says Lord Abinger, in another (*e*), "has practically had a "very pernicious effect not at all contemplated; but we "cannot construe it according to that result."

(*a*) Biffin *v.* Yorke, 6 Scott, NR. 234; 5 M. & Gr. 428, *per* Cresswell J.

(*b*) Midland R. Co. *v.* Pye, 30 LJ. C.P. 318, *per* Erle C. J.

(*c*) Nixon *v.* Phillips, 21 LJ. Ex. 90, 7 Ex. 192.

(*d*) R. *v.* Barham, 8 B. & C. 99.

(*e*) Atty.-Genl. *v.* Lockwood, 9 M. & W. 395.

In short, a Court is not at liberty to speculate on the intention of the Legislature when the words are clear, or to construe an Act according to its own notions of what ought to have been enacted (*a*). Nothing could be more dangerous than to make such considerations the ground of construing an enactment that is quite complete and unambiguous in itself. To depart from the plain and obvious meaning on account of such views, is, in truth, not to construe the Act, but to alter it (*b*). The business of the interpreter is not to improve the statute, but to expound it. The question for him is not what the Legislature meant, but what its language means (*c*). To give it a construction contrary to, or different from that which the words import or can possibly import, is not to interpret law, but to make it; and Judges are to remember that their office is jus dicere, not jus dare (*d*).

Though this rule appears so obvious, it is advisable to illustrate it by a few examples of its application. It has been repeatedly decided, for instance, that the statutes of limitations which enact that actions shall not be brought after the lapse of certain periods from the time when the cause of action accrued, barred actions

(*a*) *Per* Cur. in York & N. Midland R. Co. *v.* R., 1 E. & B. 864, 22 LJ. Q.B. 230.

(*b*) *Per* Lord Brougham in Gwynne *v.* Burnell, 6 Bing. NC. 56.

(*c*) Wigram, Interp. Wills, p. 7.

(*d*) Lord Bacon, Essay on Judicature.

brought after the time so limited, though the cause of action was not discovered or, practically, discoverable by the injured party when it accrued, or was even fraudulently concealed from him by the wrong-doer, until after the time limited by the Act had expired (*a*). The hardship of such decisions is obvious, but the language of the statutes was plain and admitted of no other construction. So, if an Act provides that convictions shall be made within a certain period after the commission of the offence, a conviction made after the lapse of that period would be bad, although the prosecution had been begun within the time limited, and though the case had been adjourned to a day beyond it with the consent, or even at the instance of the defendant (*b*). So, when an Act gives to persons aggrieved by an order of justices, a certain period after the making of the order, for appealing to the Quarter Sessions, it has been held that the time runs from the day on which the order was verbally pronounced, not from the day of its service on the aggrieved person (*c*). Even when the order is made

(*a*) Short *v.* McCarthy, 3 B. & A. 626; Brown *v.* Howard, 2 B. & B. 73; Colvin *v.* Buckle, 8 M. & W. 680; Imperial Gas Co. *v.* London Gas Co., 10 Ex. 39; Bonomi *v.* Backhouse, E. B. & E. 622, 27 LJ. QB. 378; Smith *v.* Fox, 6 Hare, 386.

(*b*) R. *v.* Bellamy, 1 B. & C. 500; R. *v.* Tolley, 3 East, 467; Pellew *v.* Wonford, 9 B. & C. 135; Farrell *v.* Tomlinson, 5 Bro. PC. 438; Adam *v.* The Inhabitants of Bristol, 2 A. & E. 389; R. *v.* Mainwaring, E. B. & E. 474, 27 LJ. MC. 278.

(*c*) R. *v.* Derbyshire, 7 QB. 193; Exp. Johnson, 3 B. & S.

behind his back, as in the case of stopping up a road, the time runs from the same date, and not from the day on which he got notice of it (*a*), notwithstanding the manifest hardship and injustice resulting from such an enactment (*b*). Where an Act ordained that no converted Papist should be deemed a Protestant unless he received the sacrament, took the abjuration oath, and filed certain certificates within six months from his declaring himself a Protestant, a compliance after that time was held insufficient (*c*).

If an Act of Parliament provides that no deed of apprenticeship shall be valid unless signed and sealed by justices of the peace, the omission of the seal would be fatal to the validity of the instrument (*d*). So, if an Act (8 Vict. c. 16, s. 9) required a company to keep a register of its shareholders to be authenticated by its seal, there would be no register until the book was sealed (*e*). It would not be open to the interpreter in either of these cases to shut his eyes to the formality required, because he deemed it unimportant, or because a hardship or failure of justice might be the consequence, in the particular case before him, of a neglect of it. An Act which required a

947; Comp. R. *v.* Shrewsbury, 1 E. & B. 711, 22 LJ. MC. 98.

(*a*) R. *v.* Staffordshire, 3 East, 151.

(*b*) *Per* Lord Ellenborough, Id. 153.

(*c*) Farrell *v.* Tomlinson, 5 Bro. P. C. 438. See also Mohummed *v.* Bareilly, LR. 1 Ind. App. 167.

(*d*) R. *v.* Stoke Damarel, 7 B. & C. 563.

(*e*) Newry R. Co. *v.* Edmunds, 2 Ex. 118.

pilot to deliver up his license to the pilotage authorities "whenever required to do so," would require implicit obedience to the letter, however arbitrarily the power which it conferred might be misused, and although the withdrawal of the licence would in effect amount to a dismissal of the pilot from his employment (*a*).

An Act which authorises a magistrate, on the application of the mother of a bastard, to summon its putative father for its maintenance, within twelve months from its birth, does not authorise a second magistrate to issue a second summons after the expiration of the twelve months; although the first summons could not be served by reason of the defendant having absented himself, and could not be renewed or continued, because the justice who had issued it had died (*b*). And as the same enactment required the justices, at the hearing, to hear the evidence of the mother, and such other evidence as she might produce, and if her evidence was corroborated, to adjudge the man to be the putative father, it was held that no order could be made against the putative father when the mother was not examined, though she had died after the summons, and before the hearing (*c*). The Divorce Act, which provided that any order made for the

(*a*) Henry *v.* Newcastle Trinity House, 8 E. & B. 723, 27 LJ. MC. 57.

(*b*) R. *v.* Pickford, E. B. & E. 77, 30 LJ. MC. 133.

(*c*) R. *v.* Armytage, LR. 7 QB. 773.

protection of the earnings of a deserted married woman might be discharged by the magistrate who made it, was held not to empower his successor to discharge it, though the magistrate who had made it was dead (*a*). An Act which imposed a penalty on any person who piloted a ship in the Thames before he was examined and admitted a Trinity House pilot, was held not to reach one who after examination and admission had been expelled from the Society (*b*). The Indian Insolvent Act, 11 & 12 Vict. c. 21, which required the insolvent to file a schedule of all his creditors, and provided that his discharge should be a bar to all demands, like a certificate under the bankruptcy laws in England, was held to bar a debt which had not been included in the schedule, and the creditor had consequently had no opportunity of opposing the discharge (*c*).

The Act which required members of Parliament, before voting in the House, to take the abjuration oath in a form which concluded with the declaration that it was taken "on the true faith of a Christian," received a literal construction, which had the effect of excluding Jews from Parliament, although the history of the enactment showed that it was directed solely to the exclusion of Roman Catholics, and

(*a*) Exp. Sharpe, 33 LJ. MC. 152; see now 27 & 28 Vict. c. 45. See also Nettleton *v.* Burrell, 8 Scott, NR. 738, and Wanklyn *v.* Woollett, 4 CB. 86.

(*b*) Pierce *v.* Hopper, 1 Stra. 249.

(*c*) Exp. Parbury, 3 De G. F. & J. 80, 30 LJ. Ch. 513.

though those who refused to take the oath would at one time have been deemed Popish recusants, and liable to punishment as such (*a*). The Harbours Act of 1847, s. 74, which makes the owner of a vessel liable for the damage done by it to the works of a harbour, was held to apply even where the damage was the result of inevitable accident from stress of weather, without any default of the men in charge of the vessel (*b*). Where an Act disqualified from killing game all persons not possessing land of a certain value, except the heir apparent of an esquire or other person of higher degree, it was held that esquires not possessed of the requisite property qualification were not excepted. However strange it might seem that the Legislature should refuse them the privilege which it had (perhaps unintentionally) granted to their eldest sons (*c*), it was held to be safer to adopt what the Legislature had actually said, than to conjecture what they had meant to say (*d*).

A statute which empowered a Court of Requests to summon any person residing in a town or navigating from its port, by leaving the summons at his abode, and to proceed *ex parte* if he did not appear, was held to justify *ex parte* proceedings against a seafaring man who had for months before the summons,

(*a*) Miller *v.* Salomons, 7 Ex. 475, 21 LJ. Ex. 161, 8 Ex. 778, 22 LJ. Ex. 169.

(*b*) Dennis *v.* Tovell, LR. 8 QB. 10.

(*c*) Jones *v.* Smart, 1 TR. 44

(*d*) *Per* Ashurst J., Id. 51.

and during the whole of the proceeding, been absent beyond the seas (*a*). So, where an Act authorised justices to hear bastardy cases on proof that the summons had been served at the last place of abode of the putative father, it was held that their jurisdiction was not taken away by proof that the latter was abroad, and had no cognizance of the summons (*b*). The Carriers Act, which exempted a common carrier from liability for the loss of or injury to certain classes of goods, unless their value was declared and insured, was construed literally as exempting him from liability, even when the loss was owing to his negligence (*c*). It was held that section 50 of the Common Law Procedure Act of 1854, which empowers a judge to make an order on either party to a cause for the production of documents, upon the application of the other party supported by his own affidavit, did not authorise an order on the affidavit of another person in its stead (*d*). And the 60th section of the same Act, which empowers a judgment creditor to obtain an order for the examination of his debtor, was held not to authorise the examination of the directors, when the debtor was a corporate body (*e*). So, the recent Solicitors Act, 23 & 24 Vict. c. 127,

(*a*) Culverwell *v.* Melton, 12 A. & E. 753.

(*b*) R. *v.* Damarell, LR. 3 QB. 769.

(*c*) Hinton *v.* Dibben, 2 QB. 646.

(*d*) Christopherson *v.* Lotinga, 15 CB. NS. 809; but comp. Kingsford *v.* G.W. R. Co., 33 LJ. CP. 307, 16 CB. NS. 761.

(*e*) Dickson *v.* Neath and Brecon R. Co., LR. 4 Ex. 87.

s. 28, which authorises the imposition of a charge for costs on property recovered or preserved through the instrumentality of a solicitor, was held not to authorise such a charge, where the suit was to prevent or stop an invasion of the right to light, for this was a suit not respecting property, but respecting an easement merely, or the mode in which it was enjoyed (*a*); nor to a case where proceedings had not gone beyond a decree for an account, and the parties had then compromised without the knowledge of the solicitor of the party who thereby did recover property (*b*).

It is but a corollary to the general rule in question, that nothing is to be added to or to be taken from a statute, unless it furnishes adequate grounds to justify the inference that the Legislature intended something which it has failed precisely to express (*c*). Words, therefore, cannot be added to an Act to supply an omission which may be thought, on merely conjectural grounds, to have been unintentional. For instance, the 21 Jac. 1, having provided that the Statute of Limitations should not run while the plaintiff was beyond the seas, and the 4 & 5 Anne having made a similar provision where the defendant was abroad, the 3 & 4 W. 4, c. 42, enacted that no

(*a*) Foxon *v.* Gascoigne, 31 L. T. 289.

(*b*) Pinkerton *v.* Easton, LR. 16 Eq. 440.

(*c*) See *per* Tindal C. J. in Everett *v.* Wells, 2 M. & Gr. 277.

part of the United Kingdom should be deemed beyond the seas within the meaning of the former Act, but made no mention of the latter; and it was held that it could not be stretched to include it (*a*). There may have been no good reason for thus limiting the new enactment to the Act of James; but there was no ground even for conjecture, much less for inference, that the Act of Anne was intended by the Legislature to be included. The probably correct conclusion from the omission was, that it had been lost sight of altogether; but this would be mere speculation.

Where a railway Act provided that the company, while in possession, under the Act, of lands liable to assessment to parochial rates, should, until its works were completed and liable to assessment, be bound to make good the deficiency in the parochial assessment by reason of the land having been taken, it was held, at first, that the company was bound to make good the deficiency in any one of the parishes through which the line ran only until the line was completed within that parish (*b*); but this construction was rejected by the Queen's Bench and by the Exchequer Chamber, partly on the ground that in effect it introduced the words "in the parish" in the Act; and it was held that the company continued liable to make

(*a*) Lane *v.* Bennett, 2 C. M. & R. 70; Battersby *v.* Kirk, 2 Bing. NC. 584.

(*b*) Whitechurch *v.* East London Co. LR. 7 Ex. 248.

good the deficiency in every parish until the whole line was completed from end to end (*a*).

A construction which would leave without effect any part of the language, would on similar grounds be rejected. Thus, in construing the 32 & 33 Vict. c. 51, which gives to certain County Courts power to try claims under 300*l.*, arising out of "any agreement in "relation to the use or hire of a ship," or in relation to the carriage of goods, with an appeal to the Court of Admiralty, and power to the latter Court to transfer any such causes to itself, the Court of Common Pleas held that it did not give the County Court jurisdiction over suits for the breach of a charter-party, notwithstanding the comprehensive nature of the language used; on the ground that the literal construction would involve the anomalies of giving by mere implication a large, novel, and inconvenient jurisdiction to the Court of Admiralty, and to the suitor the remedy of proceeding *in rem* when his claim was under 300*l.* which he did not possess when it exceeded it (*b*). The Privy Council dissented from this construction, on the ground that it left without effect the words which gave jurisdiction over any agreement in relation to the use or hire of a ship (*c*); and yet it is difficult to believe that the extreme consequences from

(*a*) R. *v.* Metrop. Distr. R. Co., LR. 6 QB. 698; Whitechurch *v.* East London R. Co., LR. 7 Ex. 248; reversed, however, 7 HL. 89.

(*b*) Simpson *v.* Blues, LR. 7 CP. 290.

(*c*) Gaudet *v.* Brown, LR. 5 PC. 134.

which the Common Pleas shrank were within the contemplation of the Legislature or the scope of the enactment.

Where the language is precise and unambiguous, but at the same time incapable of reasonable meaning, and the Act is consequently inoperative; a Court is not at liberty to give the words, on mere conjectural grounds, a meaning which does not belong to them. Thus, where an Act made warrants of attorney to confess judgment void as against the assignees of a bankrupt, if not filed within twenty-one days from execution, or unless judgment was signed "or" execution was "issued" within the same period; the Court of Queen's Bench refused to alter "or" into "and," and "issued" into "levied;" though the passage was unmeaning as it stood, and the proposed alterations would have given it an effect at once rational and consistent with the conjecturally probable intention of the Legislature (*a*).

SECTION III.—THE CONTEXT—EXTERNAL CIRCUMSTANCES.

The foregoing elementary rule of construction does not carry the interpreter far; for it is confined to cases where the language is precise and capable of but one construction. But language is rarely so free from ambiguity as to be incapable of being

(*a*) Green *v.* Wood, 7 QB. 178; see also Doe *v.* Carew, 2 QB. 317.

used in more than one sense; and to adhere rigidly to its literal and primary meaning in all cases would be to miss its real meaning in many. If a literal meaning had been given to the laws which forbade a layman to lay hands on a priest, and punished all who drew blood in the street, the layman who wounded a priest with a weapon would not have fallen within the prohibition, and the surgeon who bled a person in the street to save his life, would have been liable to punishment (*a*). On a literal construction of his promise, Mahomed II.'s cutting a man in two, was no breach of his engagement to spare his head; nor Tamerlane's burying alive a garrison, a violation of his pledge to shed no blood (*b*). The equivocation or ambiguity of words and phrases, and especially such as are general, is said by Lord Bacon to be the great sophism of sophisms (*c*). They have frequently more than one equally obvious and popular meaning, or admit of indefinite extension or restriction, according to the subject to which they relate, and the scope and object in contemplation. They often convey faithfully enough all that was intended, but comprise also much that was not. Even, therefore, where there is no indistinctness or conflict of thought, or carelessness of expression in a statute, there is enough in the natural vagueness and elasticity of language to account for the difficulty so fre-

(*a*) 1 Bl. Comm. 60.
(*b*) Vattel, L. N. b. 2, s. 273.
(*c*) Lord Bacon Adv. of Learning, b. 2.

quently found in ascertaining the meaning of an enactment, with the degree of accuracy necessary for determining whether a particular case presented for consideration, falls within it. Nothing, it has been said by a great authority (*a*), is so difficult as to construct properly an Act of Parliament; and nothing so easy as to pull it to pieces.

It is therefore always necessary to examine whether the words have not been used in some other than their most obvious meaning and construction. For this purpose it is necessary, according to Lord Coke (*b*), to consider, 1. What was the law before the Act was passed; 2. What was the mischief or defect for which the law had not provided; 3. What remedy Parliament has appointed; and 4. The reason of the remedy. According to another authority, the true meaning is to be found by considering the cause and necessity of making the Act, by comparing one part with another, and sometimes by foreign circumstances (*c*). In other words, any grounds which justify or require a departure from the literal and obvious meaning and construction of the words, phrases and sentences are to be sought in the context, read, when necessary, by the light which the history of the enactment may throw upon it.

(*a*) *Per* Lord St. Leonards in O'Flaherty *v.* McDowell, 6 HL. 179.

(*b*) Heydon's Case, 3 Rep. 7 b.

(*c*) Stradling *v.* Morgan, Plowd. 204; Eyston *v.* Studd, Id. 465.

As regards the history, or external circumstances connected with the enactment, the general rule which is applicable to the construction of all other documents is equally applicable to statutes, viz., that the interpreter should so far put himself in the position of those whose words he is interpreting, as to be able to see what those words relate to. Extrinsic evidence of the circumstances or surrounding facts under which a will or contract was made, so far as they throw light on the matter to which the document relates, and of the condition and position of the persons who made it or are mentioned in it, is always admitted as indispensable for the purpose not only of identifying such persons and things, but also of explaining the language, whenever it is patently ambiguous or susceptible of various meanings or shades of meaning, and of applying it sensibly to the circumstances to which it relates (*a*).

Thus, when a charter-party stipulates that "deten-"tion by ice" is not to be reckoned among laying days, the meaning intended to be expressed by this term cannot be accurately determined without that knowledge of the circumstances of the port and trade which the parties possessed, or are conclusively presumed to

(*a*) Wigram, Interp. Wills Prop. 5; Anstie *v.* Nelms, 26 LJ. Ex. 5, *per* Bramwell B.; Wood *v.* Priestner, LR. 2 Ex. 70; Shortrede *v.* Cheek, 1 A. & E. 57; Baumann *v.* James, LR. 3 Ch. 508; Doe *v.* Benyon, 12 A. & E. 431; Blundell *v.* Gladstone, 3 Mc. N. & G. 692; Turner *v.* Evans, 2 E. & B. 515.

have possessed; and evidence of these circumstances is received for the purpose of accurately construing the contract (*a*). When a vessel is warranted seaworthy, the meaning must vary with the nature, not only of the vessel but of the voyage; and evidence of these circumstances is admitted in order to ascertain the precise intention of the parties. In a lease of a house with a covenant to keep it in tenantable repair, it is necessary to ascertain whether it be an old one in St. Giles's, or a palace in Grosvenor Square; for that which would be a repair of the one, might not be so of the other. On the sale of a horse warranted to go well in harness, the qualities of a good goer would be different in a pony fit to draw a lady's carriage and a dray-horse; and it would therefore be necessary to inquire what was the kind of horse which was the subject of the warranty (*b*). Where a guarantee is worded in language equally applicable to a past and to a future credit, evidence would be admitted of the position of the parties at the time, in order to determine which was their real meaning (*c*).

So, in the interpretation of statutes, the interpreter

(*a*) Hudson *v.* Ede, LR. 3 QB. 412; and see Behn *v.* Burness, 3 B. & S. 751, 32 LJ. QB. 207.

(*b*) See the judgment of Blackburn J. in Burgess *v.* Wickham, 3 B. & S. 698, 33 LJ. QB. 28; Clapham *v.* Langton, 5 B. & S. 729, 34 LJ. QB. 46.

(*c*) Goldshede *v.* Swan, 2 Ex. 154; Wood *v.* Priestner, LR. 2 Ex. 66.

must, in order to understand the subject-matter and the scope and object of the enactment, call to his aid all those external and historical facts which are necessary for the purpose (*a*). In his celebrated judgment in the Alabama arbitration, Cockburn C. J. showed, by a reference to their history, that both the American and English Foreign Enlistment Acts of the early part of the present century were intended, not to prevent the sale of armed ships to belligerents, but to prevent American and English citizens from manning privateers against belligerents (*b*). The 5 Geo. 4, c. 113, for the abolition of the slave trade, was construed as extending to offences committed by British subjects out of the British dominions, that is, on the West Coast of Africa, by the light of the notorious fact that the crime against which the Act was directed, was mainly, if not exclusively committed there (*c*); though it, perhaps, may not have extended to our subjects in other parts of the world beyond our territories (*d*). An ordinance of the colony of Hong Kong, which authorized the extradition of Chinese subjects to the government of China, when charged with "any "crime or offence against the law of China," was construed, either by reference to the circumstances under

(*a*) Gorham *v.* Bishop of Exeter, rep. by Moore, p. 462.

(*b*) Supplement to the *London Gazette*, 30 Sept., 1872, p. 4135.

(*c*) R. *v.* Zulueta, 1 Car. & K. 215.

(*d*) *Per* Bramwell B. in Santos *v.* Illidge, 29 LJ. CP. 348, 8 CB. NS. 861.

which the treaty, which the ordinance enforced, had been made, or to the geographical relation of Hong Kong to China, as limited to those crimes which all nations concur in proscribing (*a*). An Act which authorized the Court before which a road indictment was preferred, to give costs, was construed as authorising the judge at Nisi Prius to do so, partly on the ground of the well-known fact that such indictments were rarely tried by the Court in which they were, in the strict sense of the word, "preferred" (*b*). Lord Westbury, when Chancellor, referred to a speech made by himself, as Attorney-General, in the House of Commons, in 1860, in introducing the Bankruptcy Bill, which was passed into law in the following year; and one of his reasons in favour of the construction which he put on the Act was that it tallied best with the intention which the Legislature might be presumed to have adopted, as it was the ground on which application had been made to it. But he observed, at the same time, that he had endeavoured, in forming his opinion, to divest his mind, as far as possible, of all impressions received from the past, and to consider the language of the Act as if it had been presented to him for the first time in the case before him (*c*). It is unnecessary to add that the external circumstances which may be thus referred to, do not justify a depar-

(*a*) Attorney-General *v.* Kwok Ah Sing, LR. 5 PC. 179, 197.

(*b*) R. *v.* Pembridge, 3 QB. 901.

(*c*) Re Mew, 31 LJ. Bcy. 89.

ture from every meaning of the language of the Act. Their function is limited to suggesting a key to the true sense, when the words are fairly open to more than one.

Reference is occasionally made to what the framers of the Act, or individual members of the Legislature intended to do by the enactment, or understood it to have done. Chief Justice Hengham said that he knew better than counsel the meaning of the 2 Westmr., as he had drawn up that statute (*a*). Lord Kenyon supported his construction of the statute 9 Anne, c. 20, by the argument that so accurate a lawyer as Mr. Justice Powell, who had drawn it, never would have used several words where one sufficed (*b*). The reports furnish other instances (*c*). But the language of an Act can be regarded only as the language of the Legislature, and the meaning attached to it by its framers or by members of parliament cannot control the construction of the language when it becomes that of the Legislature (*d*). The intention of the Legislature can be collected from no other evidence than its own decla-

(*a*) Year Book of 33 Ed. 1 p. xxxi.

(*b*) R. *v.* Wallis, 5 TR. 379.

(*c*) McMaster *v.* Lomax, 2 Myl. & K. 32; Mounsey *v.* Imray, 34 LJ. Ex. 56, 3 H. & C. 486; Drummond *v.* Drummond, LR. 2 Ch. 45.

(*d*) *Per* Pollock C. B. and Parke B. in Martin *v.* Hemming, 10 Ex. 476, 24 LJ. Ex. 5; Cameron *v.* Cameron, 2 M. & K. 289; Hemstead *v.* Phœnix Gas Co. 3 H. & C. 745, 34 LJ. Ex. 108.

ration, that is, from the Act itself; and, indeed, if any inference were to be drawn from comparing the language of the Act with that of its framers, it would be that the difference between the two was not accidental but intentional (*a*). Accordingly, the Dower Act of 3 & 4 W. 4, was construed to apply to gavelkind lands, although this was avowedly contrary to the intention of the real property commissioners who prepared that Act; for they stated in their report that it was their intention that it should not extend to lands of that tenure (*b*). Sir Francis Moor, who drew the Statute of Charitable Uses, 43 Eliz. c. 4, says, in his reading on it, that a gift of lands to maintain a chaplain or minister for divine service, or to maintain schools for catechizing, was not within its meaning, having been intentionally omitted, less they should be confiscated, since religion being variable according to the pleasure of succeeding princes, that which was orthodox at one time might be superstitious at another, and so be forfeited (*c*); but such devises were nevertheless held to fall within the Act (*d*).

Another class of external circumstances which have, under peculiar circumstances, been sometimes taken into consideration, in construing a statute, consists of acts done under it; for usage may determine the

(*a*) *Per* Tindal, CJ. in Salkeld *v.* Johnson, 2 CB. 757.

(*b*) Farley *v.* Bonham, 2 Johns. & H. 177, 30 LJ. Ch. 239.

(*c*) Duke, Char. Uses, 131.

(*d*) *Id.* 134, Penstred *v.* Payer, *Id.* 381; Grieves *v.* Case, 4 Bro. C. C. 67.

meaning of the language, at all events when the meaning is not free from ambiguity (*a*).

SECTION IV.—THE CONTEXT—EARLIER AND LATER ACTS —ANALOGOUS ACTS.

Passing from the external history of the statute to its contents, it is an elementary rule that construction is to be made of all the parts together, and not of one part only by itself (*b*). Incivile est, nisi tota lege perspecta, una aliqua particula ejus proposita, judicare vel respondere (*c*). Not only such a survey is in general essential for the purpose of ascertaining the object of the statute, and the bearing of any particular passage, but it occasionally shows that an unusual and arbitrary sense has been attached to particular expressions. For instance, the second section of Lord Tenterden's Prescription Act, 2 & 3 W. 4, c. 71, in protecting "any right of common" from disturbance after certain periods of enjoyment, uses an expression which unambiguously includes all rights of common, that is, those in gross as well as those appurtenant. But when it is read with the fifth section which, in providing a form of pleading to be applicable to all rights within the Act, gives a form which can, from its nature, be applicable only to rights appurtenant, it

(*a*) See Ex. gr. R. *v.* Leverson, LR., 4 QB. 394, and other cases which will be referred to inf.

(*b*) Co. Litt. 381a, Lincoln College Case, 3 Rep. 59 b.

(*c*) Dig. 1, 3, 34.

becomes manifest that the wide expression in the earlier section was used in the restricted sense of a right of common appurtenant (*a*). So, in the Dower Act of 3 & 4 W. 4, c. 105, the word "land" which it defines as including manors, messuages, and all other hereditaments, both corporeal and incorporeal, except such as are not liable to dower, was held not to include copyhold lands; as the sixth section, which provides that a widow shall not be entitled to dower, when "the "deed" by which the land was conveyed to her husband contains a declaration to that effect, showed that only lands which passed by deed were within the contemplation of the Legislature (*b*). Where one section of an Act gave an appeal to "any person" aggrieved by any magisterial order other than one adjudicating on settlement, and another section gave an appeal to parish officers against orders of the latter kind, it was considered that parish officers were not included in the first-mentioned section among the persons entitled to appeal (*c*).

So, where one section of the 25 & 26 Vict. c. 102, enacted, that if "any building" projecting beyond the general line of the street was pulled down, the Board of Works might order it to be set back,

(*a*) Shuttleworth *v.* Le Fleming, 19 CB. NS. 687, 34 LJ. CP. 309.

(*b*) Smith *v.* Adams, 5 De G. M. & G. 712, 24 LJ.Ch. 258; Powdrell *v.* Jones, 2 Sm. & G. 407, 24 LJ. Ch. 123. Comp. Doe *v.* Waterton, 3 B. & A. 149.

(*c*) Kettering Union *v.* Northampton Lunatic Asylum, 34 LJ. MC. 198.

giving compensation; and the next enacted that under certain circumstances "no building" should be erected in any street, without the consent of the Board, beyond the general line; the latter section, which, *per se*, would have included alterations, whether on new sites or old, was confined by the former to buildings erected on land which had been hitherto vacant (*a*). One section of the Companies Act of 1862, which enacts that where a company is being wound up by the Court, or under its supervision, any distress or execution put in force against the property of the company after the commencement of the winding up, "shall be void to all intents," is so modified by another which enacts that when an order for winding up has been made, no action or other proceeding shall be proceeded with against the company, except with the leave of the Court, that its true meaning and effect is only to invalidate the proceedings which it pronounces void, when the Court does not sanction them (*b*). In the instances above cited, the Legislature supplied in the context, the key to the meaning in which it used expressions which seemed free from doubt; and that meaning, it is obvious, was not that which literally or primarily belonged to them.

Where there are earlier Acts relating to the same

(*a*) Lord Auckland *v.* Westminster Board of Works, LR. 7 Ch. 597. See Doe *v.* Olley, 12 A. & E. 481, and Morton *v.* Woods, LR. 3 QB. 658.

(*b*) *Re* The London Cotton Co. LR. 2 Eq. 53.

subject, the survey must extend to them; for all are considered as forming one homogeneous and consistent body of law (*a*), and each of them may explain and elucidate every other part of the common system to which it belongs. For instance, where a question arose as to whether the Admiralty Court Act, 24 Vict. c. 10, which gives that Court jurisdiction over any claim for "damage" done by any ship, included injuries done to persons by collision; one reason for deciding in the negative was furnished by the fact that in other Acts *in pari materiâ*, loss of life and personal injury, on the one hand, and loss and damage to ships and other property, on the other, were invariably treated distinctly, and the word "damage" was nowhere in them applied to injuries to the person (*b*). So, the expression "possession" in the 26th section of the earlier Reform Act of 1832, which enacts that no person shall be registered in respect of his estate or interest in land as a freeholder, unless he has been "in actual possession" of it for six months, was construed in the same sense as in the Statute of Uses, which declares that the person who has the use of the land is to be deemed in lawful "possession" of it; and consequently the grantee of a rent-charge by a conveyance operating under the latter Statute, was held to be in possession of it, within the meaning of the Reform Act,

(*a*) R. *v.* Loxdale, 1 Burr. 44, *per* Lord Mansfield; McWilliam *v.* Adams, 1 Macq. HL. 176, *per* Lord Truro.

(*b*) Smith *v.* Brown, LR. 6 QB. 729.

from the date of the execution of the deed (*a*); though a grantee under a common law conveyance would not be in possession, within the same Act, until he had received a payment of the rent charge (*b*). The Reform Act of 1867, 30 & 31 Vict. c. 102, which requires, as a qualification, that the voter shall have paid all poor rates which have become payable by him up to the preceding 5th of January, was construed by the light of the earlier enactments on the same subject, as confined to rates made after the 5th of January of the preceding, and payable up to 5th of January of the qualifying year (*c*). The 12 & 13 Vict. c. 106, s. 113, which directs the discharge of a bankrupt who has been arrested for debt in coming to surrender, on production of the order of protection, and imposes a penalty on "any officer" who "detains" him, was construed by reference to the 5 Geo. 2, c. 3, s. 5, which imposes a penalty on the officer who arrests a bankrupt under such circumstances, as applying only to the officer who makes the arrest, but not to the jailer who detains him (*d*).

Not only is the later Act construed by the light of the earlier, but it sometimes furnishes a legislative interpretation of the earlier (*e*). Thus chapter 23 of

(*a*) Heelis *v.* Brown, 18 CB. NS. 90, 34 LJ. CP. 88; Hadfield's Case, LR. 8 CP. 306.

(*b*) Murray *v.* Thorniley, 2 CB. 217; Orme's Case, LR. 8 CP. 281.

(*c*) Cull *v.* Austin, LR. 7 CP. 227.

(*d*) Myers *v.* Veitch, LR. 4 QB. 349.

(*e*) 1 Burr. 447.

Magna Charta, which provides that "all weirs shall "be put down through Thames and Medway, and "through all England except by the sea-coast," was held to apply only to navigable rivers; because the 25 Ed. 3 and other subsequent statutes spoke of it as having been passed to prevent obstruction to navigation (*a*). To determine the meaning of the word "broker," in the 6 Anne, c. 16, the Bubble Act, 6 Geo. 1, c. 18, passed twelve years later, was referred to, where the same term was used (*b*). In section 299 of the Merchant Shipping Act of 1854, which enacts that damage arising from non-observance of the sailing rules shall be *primâ facie* deemed to have been occasioned by "the wilful default" of the person in charge of the deck; the expression "wilful default" was construed by the light of the later Shipping Act of 1862, the 24th section of which declares that the ship which occasioned the collision shall be deemed to be "in fault," as including a negligent as well as a criminal default (*c*). But where one Act (1 & 2 Vict. c. 110, s. 18) gave the effect of judgments to rules of Court, for the payment of money, and a later one (the Common Law Procedure Act, 1854, s. 60) authorized creditors who obtained judgment to recover the amount by the new process, which it introduced, of

(*a*) Rolle *v.* Whyte, LR. 3 QB. 286; Callis on Sewers, 258.

(*b*) Clarke *v.* Powell, 4 B. & Ad. 846; Smith *v.* Lindo, 4 CB. NS. 395, 27 LJ. CP. 196, 335.

(*c*) Grill *v.* The Screw Collier Co., LR. 1 CP. 611, *per* Willes J.

foreign attachment, it was held that this remedy did not apply to rules of Court; the object of the former Act appearing to be merely to give to rules the then existing remedies of judgments, and of the latter, to confine the new remedy to judgments in the strict acceptation of the term (*a*).

The language and provisions of expired and repealed Acts on the same subject, and the construction which they have authoritatively received, are also to be taken into consideration; for it is presumed that the Legislature uses the same language in the same sense, when dealing at different times with the same subject, and also that any change of language is some indication of a change of intention. Thus, the 202nd section of the Bankrupt Act of 1849, which makes "void" all securities given by a bankrupt to a creditor to induce the latter to forbear opposition to the bankrupt's certificate, was construed in the same sense as that which had been given to the same provision in the earlier and repealed Bankrupt Act of the 6 Geo. 4 (*b*). Where a repealed Act imposed a penalty on the owner of cattle found lying on a highway "without "a keeper," and the same provision was re-enacted without the last words, the omission was construed as obviously showing the intention that the presence of

(*a*) *Re* Frankland, LR. 8 QB. 18; Best *v.* Pembroke, LR. 8 QB. 363.

(*b*) Goldsmid *v.* Hampton, 5 CB. NS. 94, 27 LJ. CP. 286; see also Exp. Copeland, 2 De G. M. & G. 914, 22 LJ. Bcy. 17.

a keeper should no longer absolve the owner from liability (*a*).

The construction which has been put upon Acts on similar subjects, even though the language should be different, should for a similar reason be referred to. Thus, the Insolvent Act, 1 & 2 Vict. c. 110, s. 37, which vests in the provisional assignee all the insolvent's debts which become due to him before his discharge, received the same construction as a similar provision in the Bankrupt Act of 6 Geo. 4 (*b*). The provision of the 9 Geo. 4, c. 14, requiring that an acknowledgment, to take a debt out of the Statute of Limitations, should be signed "by the party chargeable thereby," was held not to include an acknowledgment by his agent, on the ground that when the Legislature intended to include the signature of agents, not only in other Statutes of Limitations, but also in several sections of the Statute of Frauds, one of which was recited in the Act, express words had been used for the purpose (*c*). So the County Court Act of 1867, which gives jurisdiction in ejectment when the value of the tenement does not exceed twenty pounds, was construed, as regards the measure of value, by reference to the Parliamentary Assessment Act (*d*).

(*a*) Lawrence *v.* King, LR. 2 QB. 205; see also R. *v.* Moah, Dearsl. 626; Exp. Gorely, 34 LJ. Bcy. 1.

(*b*) Jackson v. Burnham, 8 Ex. 173, 22 LJ. Ex. 63; Herbert *v.* Sayer, 5 QB. 965.

(*c*) Hyde *v.* Johnson, 2 Bing. NC. 776.

(*d*) Elston *v.* Rose, LR. 4 QB. 4.

That which was held a sufficient signature to a will or contract under the Statute of Frauds (*a*), was held sufficient under the Bankrupt Act, 6 Geo. 4, c. 16, s. 131 (*b*), under the Statute of Limitations (*c*), and under the Registration of Voters' Act (*d*).

But where the Acts are not analogous, the construction which has been put upon one cannot be relied upon as a guide to the construction of another, the same reasons not being applicable (*e*). For instance, the meaning put on the word "goods" in the reputed ownership clause of the Bankrupt Acts, would be no guide to its meaning in the 17th section of the Statute of Frauds, not only because the words associated with it are different, but because the objects of the Act are wholly different (*f*).

SECTION V.—THE TITLE—THE PREAMBLE—MARGINAL NOTES — SCHEDULE — PROVISOES AND SAVING CLAUSES.

Originally, bills in Parliament were mere petitions to the King. They were entered on the Rolls of Parliament, with the King's answer; and at the end

(*a*) Lemane *v.* Stanley, 3 Lev. 1; Knight *v.* Crockford, 1 Exp. 190; Herbert *v.* Treherne, 3 M. & Gr. 343.

(*b*) Ogilvy *v.* Foljambe, 3 Mer. 53; Kirkpatrick *v.* Tattersall, 13 M. & W. 766; Lobb *v.* Stanley, 5 QB. 574.

(*c*) Lobb *v.* Stanley, 5 QB. 574, *per* Patteson J.

(*d*) Bennett *v.* Brunfitt, LR. 3 CP. 28.

(*e*) Dewhurst *v.* Fielden, 7 M. & Gr. 187, *per* Maule J.

(*f*) Humble *v.* Mitchell, 11 A. & E. 205.

of the session, the Judges drew up these records into statutes to which they gave a title. In the execution of their task, they occasionally made additions, omissions, and alterations; and the practice ceased in the reign of Henry VI., when bills in the form of Statutes without titles were introduced (*a*). The title was first added about the eleventh year of Henry VII. (*b*). In the House of Lords the title now appears to be treated as a part of the bill. In the Commons, it is not read three times, like the bill; but it is amended in committee, if the amendments made in the bill require it; and it may be, and often is, again amended when, after the bill has been passed, the Speaker puts the final question, "that this be the title" (*c*).

Nevertheless, singularly enough, the title is regarded by the Courts as not forming part of the Act, and therefore it is not taken into consideration in construing any passage of it (*d*). If indeed, it has been looked at sometimes to see what was the object of the Legislature (*e*), and has occasionally been referred to

(*a*) Per Lord Macclesfield, *se defendendo*, 16 St. Tr. 1389. May, Parlmy. Pr. Ch. 18.

(*b*) Barrington Obs. Stat. 403.

(*c*) May, Parlmy. Pr., see pp. 501, 506, 519, 521, ed. 1873.

(*d*) Poulter's case, 11 Rep. 33 b.; *per* Treby C. J. in Chance *v.* Adams, 1 Lord Raym. 77; Mills *v.* Wilkins, 6 Mod. 62; *ver* Lord Hardwicke in Atty.-Genl. *v.* Weymouth, Ambl. 22; *per* Lord Mansfield in R. *v.* Williams, 1 W. Bl. 95; *per* Lord Cottenham in Hunter *v.* Nockolds, 1 Mc.N. & G. 651; Salkeld *v.* Johnson, 2 Ex. 283; Graves *v.* Ashford, LR. 2 CP. 417; Hadden *v.* The Collector, 5 Wallace, 107.

(*e*) Ex. gr., *per* Cur. in Johnson *v.* Upham, 2 E. & E. 250,

by the judges as bearing on the construction of the Act (*a*), this has been excused on the ground that the mind, when labouring to discover the design of the Legislature, naturally seizes on everything from which aid can be derived (*b*).

No greater effect is to be given to the marginal notes of the sections; neither they nor the punctuation being parts of the Act (*c*). Formerly, the bill was at one of its stages engrossed without punctuation on parchment (*d*). This practice was discontinued in 1849, since which time the record of the statutes is a copy printed on vellum by the Queen's printer (*e*).

The preamble has been said to be a good means to find out the meaning of a statute, and, as it were, a key to the understanding of it (*f*); and as it usually states or professes to state, the general object and intention of the Legislature in passing the enactment, it may legitimately be consulted for the purpose of solving any ambiguity, or fixing the meaning of words

28 LJ. QB. 257; Taylor *v.* Newman, 4 B. & S. 89, 32 LJ. MC. 186.

(*a*) See ex. gr. *per* Wigram V. C. in Wood *v.* Rowcliffe, 6 Hare, 191; *per* Grose J. in R. *v.* Gwenop, 5 TR. 135; see Free *v.* Burgoyne, 5 B. & C. 400, 2 Bligh, NS. 78.

(*b*) *Per* Cur. in U. S. *v.* Fisher, 2 Cranch, 386; U. S. *v.* Palmer, 3 Wheat. 631.

(*c*) Claydon *v.* Green, LR. 3 CP. 511; Barrington, Obs. on Stat. 394; see Barrow *v.* Wadkin, 24 Beav. 327.

(*d*) 1. Bl. Comm. 183.

(*e*) May, Parl. P. Ch. 18.

(*f*) Bac. Ab. Stat. I. 2, Co. Litt. 79a, 4 Inst. 330; Halton *v.* Cove, 1 B. & Ad. 558; Beard *v.* Rowan, 9 Peters, 317.

which may have more than one, or determining the scope or limit of the effect of the Act, whenever the enacting part is in any of these respects open to doubt. Thus, in the 26 Geo. 3, c. 107, s. 3, which empowered every person who had served in the militia and was married, to set up in trade in a corporate town, as freely as soldiers might under an earlier enactment, and declared that "no such militiaman" should be removeable from the town until he became chargeable,—it being open to doubt whether the expression "such militiaman" included all married militiamen, or only married militiamen who had set up in trade in towns, the preamble of the earlier Act showed that the latter was the true construction, as it stated that the mischief to be remedied was the state of the law which prevented soldiers from setting up in trade in corporate towns, and thus showed that the enactment was confined to men settled in trade (*a*). So, as an Act which authorized aliens who "shall "have been resident" in the country for two years to hold land, might either be limited to persons who had so resided before the passing of the Act, or extend to those who should at any time reside for the required time, the preamble was resorted to in order to determine which of the two meanings was the most agreeable to the policy and object of the Act (*b*); and as it recited that aliens were prevented by law from holding

(*a*) R. *v.* Gwenop, 5 TR. 145. (*b*) Beard *v.* Rowan, 9 Peters, 301.

lands in the State, and it was the interest of the State that such prohibitions should be done away with, it showed that the former construction was less adapted to give effect to the intention of the Legislature than the latter. The 137th section of the Bankrupt Act of 1849, which enacted that a judge's order to sign judgment, given by a trader defendant, should be void if not filed, was held limited to traders who became bankrupt, by the preamble prefixed to the section which professed to enact it "with respect to transac-"tions with the bankrupt" (*a*). A wider construction, it is to be added, would have had the unjust effect of enabling the trader who had not become bankrupt to set aside as void his own deliberate act, an intention not to be imputed to the Legislature, if the language could possibly admit of any other meaning. Under a statute (17 Geo. 2, c. 38, s. 12), which enacted that when a person came into the occupation of premises for which the preceding tenant was rated to the poor, the old and new occupants should be liable to the rate in proportion to the time of their occupation, the question arose whether either, and if so, which of them was to pay for the interval between the removal and the beginning of the second occupation; and this was determined by the preamble, which, by reciting that in consequence of rated occupiers removing without paying their rates, and other persons entering and occupying the premises for a part of the year, great

(*a*) Bryan *v.* Child, 5 Ex. 368, 1 L. M. & P. 429.

sums were lost to the parish, showed that the object of the Act was not to make an equitable adjustment between the two occupiers, but to protect the parish from loss. It was therefore held that the rates were payable for the interval between the two occupations, and that the burden fell on the outgoing tenant, who was formerly liable under the Act of Elizabeth for the whole rate (*a*). An Act which made it penal for publicans to allow bad characters to "assemble and "meet together" in his house, would not be broken by his permitting such persons to enter for taking refreshment and remaining there as long as was reasonably necessary for that purpose, when the preamble showed that the object in view was the repression of disorderly conduct, not the absolute denial of all hospitality to persons of bad character (*b*). In the 35 Geo. 2, c. 6, which recited in the preamble a doubt as to who were legal witnesses to a will of land, and enacted that legatees and devisees who attested "any will" should be good witnesses, but that the bequests and devises to them should be void, the enacting part was limited by the preamble to wills of land. Wills of personalty at that time needed no attestation; and the principle of *cessante ratione cessat lex*, as well as the *primâ facie* injustice of depriving persons of property, making it reasonably doubtful whether the Legislature had used the expression "any

(*a*) Edwards *v.* Rusholme, LR. 4 QB. 554.

(*b*) Greig *v.* Bendeno, E. B. & E. 133, 27 LJ. MC. 294.

"will" in its full and unrestricted meaning, the preamble was legitimately invoked to determine the scope of the enactment (*a*).

But the preamble cannot either restrict or extend the enacting part, when the language of the latter is plain, and not open to doubt either as to its meaning or its scope (*b*). It is not unusual to find that the enacting part is not exactly co-extensive with the preamble. In many Acts of Parliament, although a particular mischief is recited in the preamble, the legislative provisions extend beyond the mischief recited. The preamble is often no more than a recital of some of the inconveniences, and does not exclude any others for which a remedy is given by the Statute. The evil recited is but the motive for legislation; the remedy may both consistently and wisely be extended beyond the cure of that evil (*c*); and if on a review of the whole Act a wider intention than that expressed in the preamble appears to be the real one, effect is to be given to it notwithstanding the less extensive import of the preamble (*d*). Thus, the

(*a*) Emanuel *v.* Constable, 3 Russ. 526, overruling Lees *v.* Summergill, 17 Ves. 508. See other instances in Wethered *v.* Calcutt, 5 Scott, NR. 409 inf., *Re* Masters, 33 LJ. QB. 146.

(*b*) R. *v.* Athos, 8 Mod. 144, *per* Lord Mansfield in Patteson *v.* Banks, Cowp. 543, and Perkins *v.* Sewell, 1 W. Bl. 659, Trueman *v.* Lambert, 4 M. & S. 239; Wright *v.* Nuttall, 10 B. & C. 492; Crespigny *v.* Wittenoom, 4 TR. 793, *per* Buller J.; Salter's Co. *v.* Jay, 3 QB. 109.

(*c*) *Per* Lord Denman, in Fellowes *v.* Clay, 4 QB. 349.

(*d*) *Per* Lord Tenterden, in

4 & 5 Ph. & M. c. 8 made the abduction of all girls under sixteen penal, though the preamble referred only to heiresses and other girls with fortunes (*a*). So, the 13 Eliz. c. 10, which makes void all leases, gifts, grants, and conveyances of estates, made by any dean and chapter, or master of an hospital, of any hereditaments, parcel of the possessions of the cathedral, church or hospital, except for the limited term allowed by the Act, was not narrowed or controlled by a preamble, which recited only that divers ecclesiastical persons, endowed of ancient palaces, mansions, and buildings belonging to their benefices, not only suffered them to go to decay, but converted the materials to their own benefit, and conveyed away their goods and chattels to defeat their successors' claims for dilapidations (*b*). It has been more than once decided that the preamble of the 37 Geo. 3, c. 123, which refers only to the mischiefs consequent on inciting men to sedition and mutiny, and on administering to them oaths with this object, did not restrict the enacting part of the statute, which made it felony to administer oaths not only with a view to mutinous or seditious purposes, but also with a view to disturb the peace, or to be a member of any association for any such purpose, or not to reveal any unlawful combination or illegal act; but that the latter

Doe *v.* Brandling, 7 B. & C. 660, and see Copeman *v.* Gallant, 1 P. Wms. 320.

(*a*) Co. Litt. 88 b. n. 14.

(*b*) York *v.* Middlesborough, 2 Y. & J. 196, 214.

words included the oaths of poachers sworn not to betray their companions, and of workmen similarly bound to secrecy as members of an association for raising wages by a strike, or for not working under certain prices (*a*). So the preamble of the 14 Geo. 3, c. 78, which declared that an earlier Act for the regulation of buildings and the prevention of fire in the cities of London and Westminster had been found inefficacious, and that it would tend to the safety of the inhabitants of those cities if other regulations were established, was not suffered to restrict to the metropolis the 83rd section of that Act, which enacted in general terms that in order to deter persons from wilfully setting fire to their houses, with a view to gain to themselves the insurance money, the directors of insurance offices should in suspicious cases lay out the insurance money in re-iustating the damaged buildings (*b*). This construction, however, was further justified by the circumstance that the section in question was a re-enactment of a similar provision in the earlier and repealed Act, with the significant omission of the words "within the limits aforesaid," which words remained in most of the other sections of the later Act. The 11th section of the 21 Jac. 1, c. 19, which empowered bankruptcy commissioners to dispose of goods which were in the

(*a*) R. *v.* Brodribb, 6 C. & P. 571; R. *v.* Marks, 3 East, 157; R. *v.* Loveless, 1 M. & Rob. 349; R. *v.* Ball, 6 C. & P. 563.

(*b*) Exp. Gorely, 34 LJ. Bcy. 1, *per* Lord Westbury.

possession of the bankrupt, as reputed owner, with the real owner's consent, was prefaced by a preamble which recited the mischief of bankrupts "secretly "conveying" their goods to other persons, and yet remaining in the reputed ownership of them; but the enactment was not confined to this particular form of the mischief (*a*).

The 3 Jac. 1, c. 10, which, after reciting that the King's subjects were charged with conveying "felons "and other malefactors and offenders against the "law," to the jail, punishable by imprisonment there, enacted that "every person" committed to the county jail by a justice "for any offence or misdemeanor," should bear his own charges of conveyance, if he had property, and that if he had not, they should be borne by the parish where he was apprehended, was held not to be confined by the preamble to offenders against the ordinary law, but to apply to deserters from the army (*b*). So, the preamble of the 22 Geo. 3, c. 75, which recited the mischief of granting Colonial offices to persons who remained in England, and discharged the duties of their offices by deputy, was not suffered to exclude judicial offices from the general enacting part, which authorised the Governor and Council to remove "any" office-holder for misconduct; although the mention of delegation in the preamble showed

(*a*) Mace *v.* Cadell, Cowp. 232.

(*b*) R. *v.* Pierce, 3 M. & S. 62.

that the judicial office was not there in contemplation (*a*).

The 2 & 3 W. 4, c. 100, which after reciting that the expense and inconvenience of suits for the recovery of tithes ought to be prevented by shortening the time required for the valid establishment of claims to exemption from tithes, enacted that when a claim to tithes was made by a layman, a claim to exemption should be deemed conclusively established by proof of non-payment for sixty years, gave rise to a celebrated legal controversy, in which the effect of the preamble was much considered. Before the passing of that Act, no layman could establish exemption from tithes, except by proving that the land in respect of which they were claimed formerly belonged to one of the great monasteries, and had been exempt in its hands; the latter proposition being usually established by such evidence of non-payment in modern times as sufficed for inferring the exemption. It was held by some of the judges (*b*), that the enactment was confined to claims of this kind, and the preamble was invoked in support of this view. But it was considered by others (*c*), and finally decided (*d*), that the Act applied to all cases whatsoever, and that upon proof

(*a*) Willis *v.* Gipps, 5 Moo. P. C. 379, see p. 388.

(*b*) Wigram V. C., Tindal CJ., Cresswell J., Patteson J., and Coleridge J.

(*c*) Lord Denman, Williams, Coltman, Erle JJ., Pollock C. B., Parke, Alderson, and Platt BB.,

(*d*) By Lord Cottenham.

of non-payment for sixty years the landowner was exempt, whether the land had ever been monastic or not. The enactment was free from ambiguity, and contained no flexible expression capable of different meanings (*a*); while the preamble, which one side understood as meaning that the expense and inconvenience of the same kind of suits as before ought to be prevented, was thought on the other to mean that expensive and inconvenient suits ought to be prevented in all cases; and that this was best effected by giving the more easy method of establishing exemptions by simple proof of non-payment for a certain time (*b*).

Where the preamble is found more extensive than the enacting part, it is equally inefficacious to control the effect of the latter, when otherwise free from doubt. For instance, the Act of 3 W. & M. c. 14, which gave creditors an action of debt against the devisees of their debtor was held not to authorise an action for a breach of covenant, or for the recovery of money not strictly a "debt" (*c*); though the preamble recited that it was not just that by the contrivance of debtors their creditors should be defrauded of their debts, but it had often happened that after binding themselves by bonds "and other specialties" they

(*a*) *Per* Lord Cottenham, in Salkeld *v.* Johnson, 1 Mac. & G. 264.

(*b*) See Salkeld *v.* Johnson, 1 Hare, 196, 1 Mac. & G. 242, Fellowes *v.* Clay, 4 QB. 313.

(*c*) Wilson *v.* Knubley, 7 East, 128; Farley *v.* Bryant, 3 A. & E. 839; Jenkins *v.* Briant, 6 Sim. 630; Morse *v.* Tucker, 5 Hare, 79.

devised away their property. The mention, it was observed, of the action of debt in the enacting part was almost an express exclusion of every other (*a*). So, an Act which required the trustees of a turnpike trust to apply the moneys which they received, first, in paying "any interest which might from time to "time be owing," next, in keeping the road in repair, and finally, in paying off the principal sums due by the trust, was held not to authorize the payment of arrears of interest; although this enactment was prefaced by a preamble which recited that arrears of interest as well as principal sums were due by the trust, and could not be paid off unless further powers were granted (*b*). Such an extension of the Act, however, would have required very clear words, since it would have had the effect of throwing on the ratepayers of one year a burden properly belonging to those of another.

It has been sometimes said that the preamble may extend, but cannot restrain the enacting part of a statute (*c*); and, undoubtedly, from the abstract nature

(*a*) *Per* Lord Ellenborough, 7 East, 135.

(*b*) Market Harborough *v.* Kettering, LR. 8 QB. 308.

(*c*) R. *v.* Athos, 8 Mod. 144, Copeman *v.* Gallant, 1 P. Wms. 320; *per* Lord Abinger in Walker *v.* Richardson, 2 M. & W. 889; *per* Willes J. in Hayman *v.* Flewker, 13 CB. NS. 526, 32 LJ. CP. 132; *per* Turner LJ. in Drummond *v.* Drummond, LR. 2 Ch. 44; *per* Crowder J. in Kearns *v.* Cordwainers' Co. 6 CB. NS. 388.

of the terms and phrases in which laws are couched, its effect is usually restrictive. But it would be difficult to support the proposition as universally true (*a*). The construction given to the 25 Geo. 2, c. 6, the Bankrupt Act of 1849, and by many of the Judges to the 2 & 3 W. 4, c. 100, may be referred to as instances of a restricted meaning given to an enactment by its preamble (*b*). It could hardly be doubted that a statute which, in general terms, made it felony to alter a bill of exchange, would be restrained to fraudulent alterations, by a preamble which recited that it was desirable to suppress cheats and frauds effected by altering bills (*c*). It seems more correct to state that the function of the preamble is to explain what is ambiguous in the enactment (*d*), and that it may either extend or restrain it as best suits the object and intention.

When two passages of an Act are so repugnant as to be mutually destructive, the earlier passage gives way to the later, which is taken, as in a will, to speak the latest intention (*e*). A difference, however, is

(*a*) See ex. gr., *per* Parker C. B. and Lord Hardwicke in Ryall *v.* Rolle, 174, 182.

(*b*) Emanuel *v.* Constable; Bryan *v.* Child; Salkeld *v.* Johnson, Sup. pp. 37, 38 & 43. See also R. *v.* Manchester, 26 LJ. MC. 65; Hughes *v.* Chester R. Co. 1 Dr. & Sm. 524.

(*c*) R. *v.* Bigg, 3 P. Wms. 434, arg.

(*d*) The People *v.* Utica Insur. Co., 15 Johns. N. Y. Rep. 389.

(*e*) Co. Litt. 112 Shep. Touchst. 88; Sims *v.* Doughty, 5 Ves. 243; Constantine *v.* Con-

said to exist in this respect between the effect of a saving clause or exception and a proviso in a statute. When the proviso appended to the enacting part is repugnant to it, it repeals the enacting part (*a*); but it is said by Lord Coke that, when the enactment and the saving clause which qualifies it are repugnant—as where a statute vests a manor in the king, saving the rights of all persons, or vests in him the manor of A saving the rights of A—the saving clause is to be rejected, because otherwise the enactment would have been made in vain (*b*). One authority which he cites for this proposition is the case of the reversal of the Duke of Norfolk's attainder, by the Act of 1 Mary. That Act declared that the earlier Statute of 38 Henry VIII., which had attainted the Duke, was no Act, but utterly void, providing, however, that this reversal should not take from the grantees of Henry VIII. or Edward VI. any lands of the Duke which those kings had granted to them; and this provision was held inoperative to save the rights of the grantees. But this resulted, it is said, not because the saving clause was repugnant to the enacting part, but because the latter, in declaring the attainder void, in effect established also that the lands of the Duke had never vested in the Crown, that none, consequently, had ever passed to the grantees, and that there was

stantine, 6. Ves. 100; Morral *v.* Sutton, 1 Phil. 533.

(*a*) Atty.-Genl. *v.* Chelsea, Fitzg. 19.

(*b*) Alton Wood's Case, 1 Rep. 47.

thus no interest to be saved on which the clause could operate (*a*).

The illustrations given by Coke, it is to be observed, were cases of conveyance of land. But the rule as regards the construction of repugnant passages in a conveyance by deed is that the earlier of them prevails (*b*); and there may be good ground for holding that what is given in the early part of the instrument cannot be got back by anything short of a reconveyance. If Lord Coke's doctrine were confined to such cases as he puts in illustration of it, it might be contended that, in all others, there was no solid distinction between a saving clause and a proviso; and that the later of two passages in a statute, being the expression of the later intention, should prevail over the earlier; as it unquestionably would, if embodied in a separate Act.

If the enacting part and a Schedule appended to the statute are repugnant, the former prevails over the latter (*c*). Where a general Act is incorporated into a special one, the provisions of the latter would prevail over any of the former with which they were inconsistent (*d*).

(*a*) Plowd. 565; Savings Institution *v.* Makin, 23 Maine, 370.

(*b*) Co. Litt. 112, Shep. Touchst. 81, Hard. 94; Furnivall *v.* Coombes, 5 M. & Gr. 736.

(*c*) R. *v.* Baines, 12 A. & E. 227. See also *per* Patteson J. in Allen *v.* Flicker, 10 A. & E. 640.

(*d*) Atty.-Genl. *v.* G. E. R. Co. LR. 7 Ch. 475.

In a word, then, it is to be taken as a fundamental principle, standing, as it were, at the threshold of the whole subject of interpretation, that the intention of the Legislature is invariably to be accepted and carried into effect, whatever may be the opinion of the judicial interpreter, of its wisdom or justice. If the language admits of no doubt or secondary meaning, it is simply to be obeyed, without more. If it is open to doubt and capable of receiving more than one construction, the task of interpretation begins, and the true meaning is to be sought, not on the wide sea of surmise and speculation, but "from such conjectures as are drawn "from the words alone, or something contained in "them" (*a*); that is, from such arguments and inferences as may be based within the four corners of the law of which the passage under interpretation forms a part, viewed by such light as its history may properly throw upon it, and construed with the help of certain general principles, which though neither infallible nor inflexible, are, nevertheless, indispensable to a right understanding of the language of enactments.

(*a*) Puff. L.N. b. 5, c. 12, s. 2, note by Barbeyrac.

CHAPTER II.

SECTION I.—WORDS UNDERSTOOD ACCORDING TO THE SUBJECT MATTER.

In interpreting a statute, it is to be borne in mind, at the outset, that language is always used secundum subjectam materiam, and that it must therefore be understood in the sense which best harmonizes with the subject matter. This is evident enough in the simple case of a word which has two totally different meanings. The Act of Ed. III., for instance, which forbade ecclesiastics to purchase "provisions" at Rome, would be construed as referring to nominations to benefices, and not to food; when it was seen that the object of the Act was not to prevent ecclesiastics from living in Rome, but to repress papal usurpations (*a*). No one is likely to confound the "piracy" of the high seas with the "piracy" of copyright; or to give, in one branch of the law, the meaning which would belong, in another, to a host of familiar words, such as "accept," "assure," "issue," "settlement." This is too plain to need further illustration.

Though technical words are primarily to be inter-

(*a*) 1 Bl. Comm. 60.

preted in the sense in which they are understood in the science, art, or business in which they have acquired it (*a*), that meaning is rejected as soon as the judicial mind is satisfied that another is more agreeable to the object and intention (*b*). Thus, the 38 Geo. 3, c. 5 and c. 60, which exempted "hospitals" from the land tax, was construed as applying to all establishments popularly known by that designation, and even as extending to an asylum for orphans (*c*); when it appeared more consonant to the object of the Act to give it that wider meaning, than to restrict it to what are alone "hospitals" in the strict legal sense of the term, that is, eleemosynary institutions in which the persons benefited form a corporate body (*d*). An Act which privileged a bankrupt from arrest for "debt" was, on the same principle, extended to arrests for non-payment of money ordered to be paid by an order of the Court of Chancery, or by a rule of a common-law court, though technically not constituting a debt (*e*). So, when it was enacted, (5 & 6 W. 4, c. 54), that marriages already celebrated between persons within

(*a*) Morrall *v.* Sutton, 1 Phil. 533; Doe *v.* Jesson, 2 Bligh, 2; Doe *v.* Harvey, 4 B. & C. 610; Abbot *v.* Middleton, 7 HL. 68, 28 LJ. Ch. 110; The Pacific, 33 LJ. P. M. & A. 120.

(*b*) *Per* Lord Wensleydale in Ready *v.* Fitzgerald, 6 HL. 877. See also Towns *v.* Wentworth, 11 Moo. 543.

(*c*) Colchester *v.* Kewney, LR. 2 Ex. 363.

(*d*) Sutton's Case, 10 Rep. 31a.

(*e*) Exp. Williams, 1 Sch. & Lef. 169, R. *v.* Edwards, 9 B. & C. 652; Lees *v.* Newton, LR. 1 CP. 658. Comp. Bancroft *v.* Mitchell, LR. 2 QB. 549.

prohibited degrees should not be annulled for that cause, unless by sentence pronounced in a suit then "depending;" it was held that this last word was to be understood in a popular and not technical sense, and that a suit was "depending" as soon as the citation had been issued(*a*). An Act which authorised the Court before which a road indictment was "preferred," to give the prosecutor costs, was held to authorise the judge to give them, who tried the indictment at Nisi Prius after its removal into the Queen's Bench (*b*). The technical meaning of the word "preferred," would have rendered the Act nugatory in a large majority of cases; for road indictments are rarely tried at the Assizes at which they are "preferred" (*c*). Where the Quarter Sessions were empowered to order "the party against whom an appeal was decided," to pay the costs of the successful party; it was held that the prosecutor who had procured the conviction successfully appealed against, was for this purpose the party appealed against, though he was not so on the record, or formally, nor even by being served with notice of the appeal (*d*). The convicting justices were not the parties appealed against, though the Act required that the notice of appeal should be served on them.

(*a*) Sherwood *v.* Ray, 1 Moo. PC. 353. See Ditcher *v.* Denison, 11 Moo. PC. 324.

(*b*) R. *v.* Pembridge, 3 QB. 901; R. *v.* Preston, 7 Dowl. 593; and see R. *v.* Papworth, 2 East, 413.

(*c*) *Per* Coleridge J. 3 QB. 906.

(*d*) R. *v.* Hants, 1 B. & Ad. 654; R. *v.* Purdey, 34 LJ. MC. 4; 5 B. & S. 909.

The 17 Geo. 3, c. 26, which, after requiring the registration of annuities, to check, as the preamble states, the pernicious practice of raising money by the sale of life annuities, except annuities charged on lands whereof the grantor is "seised in fee simple or fee "tail in possession," was construed as including in this exception a person who was tenant for life with a general power of appointment; for such a person, though not technically a tenant in fee simple, is substantially so, since he is the absolute owner of the property (*a*). Although the word "children" is confined technically to legitimate children (*b*), it would be construed as including illegitimate children, when such seemed to be more consonant to the intention. Thus, the Marriage Act, 26 Geo. 2, c. 33, which declared void the marriage of minors without the consent of their parents or guardians, was held to apply to illegitimate children, since clandestine marriages by them were within the mischief which it was the object to remedy (*c*): and the 4 & 5 Ph. & M. c. 8, s. 3, which made it penal to take an unmarried girl under sixteen from the possession of her father or mother, against their will, was held to apply to the taking of a natural daughter from her putative father (*d*).

(*a*) Halsey *v.* Hales, 3 TR. 194.

(*b*) Helton *v.* Lydlinch, Burr. S. C. 190, 2 Stra. 1168; R. *v.* Maude, 2 Dowl. NS. 58; Simmons *v.* Crook, LR. 6 HL. 265.

(*c*) R. *v.* Hodnett, 1 TR. 96; and see R. *v.* St. Giles, 11 QB. 173; R. *v.* Brighton, 1 B. & S. 447, 30 LJ. MC. 197.

(*d*) R. *v.* Cornforth, 2 Stra. 1162.

In a Customs' Act, which imposed duties on imported commodities, the articles specified would generally be understood in their known commercial sense (*a*). Thus "Bohea" tea was understood to mean, not the pure and unadulterated article to which the name strictly belongs, and which alone is known by it in China; but all teas usually bought and sold at home as Bohea (*b*). So, to take an illustration from a contract, a fire policy which limited the responsibility of the insurers to explosions by "gas," was construed as referring only to that kind of gas which was popularly known by that term, viz., common illuminating gas (*c*).

Where a statute applied to the United Kingdom, and the technical meaning of words differed in the different Kingdoms, the language would be taken in its popular sense (*d*).

SECTION II.—THE MEANING OF GENERAL WORDS ADAPTED TO THE SUBJECT-MATTER.

BUT it is in the interpretation of general words and phrases that the principle of strictly adapting the meaning to the particular subject-matter in reference to which the words are used, finds its most frequent

(*a*) Atty.-Gen. *v.* Bailey, 1 Ex. 281; Elliott *v.* Swartwout, 10 Peters, 137.

(*b*) Two hundred chests of tea, 9 Wheat. 430.

(*c*) Stanley *v.* Western Ins. Co., LR. 3 Ex. 71.

(*d*) Saltoun *v.* Advocate-General, 3 Macq. 659.

application. However wide in the abstract, they are more or less elastic, and admit of restriction or expansion to suit the subject-matter. While expressing truly enough all that the legislature intended, they frequently express more, in their literal meaning and natural force; and it is necessary to give them the meaning which best suits the scope and object of the Statute, without extending to ground foreign to the intention. It is, therefore, a canon of interpretation that all words, if they be general and not express and precise, are to be restricted to the fitness of the matter (*a*). They are to be construed as particular if the intention be particular (*b*); that is, they must be understood as used in reference to the subject-matter in the mind of the legislature, and to it only. Thus, enactments which related to "persons" would be variously understood, according to the circumstances under which they were used, as meaning persons born in the Queen's allegiance, or as including also all foreigners actually within the British dominions (*c*), or (the meaning in prize and commercial law,) only persons domiciled in those dominions (*d*). In an Act which provided for the recovery of

(*a*) Bac. Max. 10.

(*b*) Stradling *v.* Morgan, Plowd. 204.

(*c*) Courteen's Case, Hob. 270, 1 Hale, P. C. 542; Nga Hoong *v.* R., 7 Cox, 489; Low *v.* Routledge, 35 LJ. Ch. 117, 1 LR. Ch. 42; *per* Turner L. J.

(*d*) Wilson *v.* Marryat, 8 TR. 31, The Indian Chief, 3 Rob. 12.

wages by "persons belonging to a ship," this expression would obviously be confined to persons employed in its service on board; while in one which related to the salvage of "persons belonging to the ship," it would as obviously include passengers as well as crew (*a*). The 13 Eliz. c. 5, which made void, as against creditors, all voluntary alienations of "goods," was held to apply only to such goods as were liable to be taken in execution; as the object of the Act was to prevent such property from being withdrawn from the reach of creditors: consequently, the word "goods" was held not to include choses in action, as long as these were not subject to execution (*b*). But the same word was held to include them in the reputed ownership clauses of former bankrupt and insolvent Acts (*c*); as they were deemed to fall within the specific object of the legislature, which was to protect creditors against being deceived by an apparent ownership of property.

The complex term "inhabitant" may be cited as having frequently furnished illustration of this adaptation of the meaning to what appears to suit most exactly the object of the Act. In the abstract, the word would include every human being dwelling in the

(*a*) The Fusilier, 34 LJ. P.M. & A. 25.

(*b*) Dundas *v.* Dutens, 1 Ves. J. 196; Rider *v.* Kidder, 10 Ves. 360; Norcutt *v.* Dodd, Cr. & Ph. 100; Sims *v.* Thomas, 12 A. & E. 536.

(*c*) Ryall *v.* Rowles, 1 Ves. 367, Exp. Baldwin, De G. & Jo. 230, 27 LJ. Bank. 17.

place spoken of. A right of way over a field to the parish church granted to the "inhabitants" of a parish would include every person in the parish (*a*). But where the object of an Act was to impose a pecuniary burden in respect of property in the locality, (as in the case of the Statute of Bridges, 22 Henry 8, c. 5, which throws the burden of making and repairing bridges on "the inhabitants" of the town or county in which they are situated, and in the Riot and Black Acts (*b*),) the expression would be construed as comprising all holders of lands or houses in the locality, whether resident or not, and corporate bodies as well as individuals, but as excluding actual dwellers who had no rateable property in the place, such as servants; it being "infinite and impossible" to tax every inhabitant being no householder, and who could not be distrained upon for non-payment, and therefore highly improbable that the legislature intended to tax them (*c*). On the other hand, where the object is to impose the performance of a personal service within the locality, the word "inhabitant" would probably be construed as not comprising either corporate bodies or non-resident proprietors. Thus, it was held that a person who occupied premises in one parish and carried on his business in person there, but resided in his dwell-

(*a*) R. *v.* Mashiter, 6 A. & E. 165, *per* Littledale J.

(*b*) R. *v.* North Curry, 4 B. C. 958, per Bayley J.

(*c*) 2 Inst. 702, R. *v.* North Curry, 4 B. & C. 958, *per* Bayley J.

ing-house in another, was not an "inhabitant" of the former parish so as to be bound to serve as its constable (*a*). So, an Act which authorized the imposition of a rate on all who "inhabited or occupied" any land or house, and the appointment of a number of "inhabitants" to collect the rates, was held to throw the latter duty only on actual dwellers in the locality (*b*). But here the word "occupied" would suggest a meaning for "inhabitants" distinct from "occupiers."

Again, another meaning would be given to the same expression, where the object was to determine the settlement of a pauper, or the qualification of an elector. In those cases, a person is an inhabitant or resident of the place in which he usually sleeps. What amounts to inhabitancy in this sense, it is impossible to define. Sleeping in a place once or twice does not constitute it; and, on the other hand, such residence generally in a place, in this sense, is quite compatible with much absence from it (*c*). But if an Act requires residence for a certain time at least, as a

(*a*) R. *v.* Adlard, 4 B. & C. 772; and see R. *v.* Nicholson, 12 East, 330; R. *v.* North Curry, ubi sup.

(*b*) Donne *v.* Martyr, 8 B. & C. 62.

(*c*) Wescomb's Case, LR. 4 QB. 110; Taylor *v.* St. Mary Abbott, LR. 5 CP. 309; Bond *v.* St. George's, Id. 314; and see Whitehorne *v.* Thomas, 7 M. & Gr. 1; Ford *v.* Pye, LR. 9 CP. 269; Ford *v.* Hart, Id. 273; McDougal *v.* Paterson, 11 CB. 755, 2 L. M. & P. 681; Dunston *v.* Paterson, 28 LJ. CP. 97.

qualification, it would be understood to make actual bodily presence in the place for that time indispensable; as was held in the construction of the Act which constituted the congregation of the University of Oxford of residents, and required that those residents should have resided at least twenty weeks in a year (*a*).

The same expression has received another meaning where the object of the Act was to preserve information as to the place where a person was to be found at times when it was most likely that he should be wanted; as in the enactment which requires an attorney to indorse his "place of abode" on the summons which he issues; or a witness to a bill of sale, to add to his signature a description of his occupation and "residence." In these cases it has been held, considering the object which the legislature had in view, that the place of business was the abode or residence intended (*b*). But in general the place of business would not be regarded as the place of abode (*c*).

Under the provision of the County Courts Act, which gives the Superior Courts concurrent jurisdiction when the parties dwell more than twenty miles apart, the principal office of a railway company is its

(*a*) R. *v.* V. C. of Oxford, LR. 7 QB. 471.

(*b*) Roberts *v.* Williams, 2 C. M. & R. 561; Blackwell *v.* England, 27 LJ. QB. 124, E. & B. 541; Attenborough *v.* Thompson, 27 LJ. Ex. 23, 2 H. & N. 559; Ablett *v.* Basham, 25 LJ. QB. 239, 5 E. & B. 1019. See Thorpe *v.* Browne, LR. 2 HL. 220.

(*c*) See R. *v.* Hammond, 21 LJ. QB. 153.

dwelling (*a*); but not its other offices or stations (*b*). But the manufactory or shop, and not its registered office, is the dwelling within the meaning of the same provision, of a manufacturing company (*c*).

In the same way, the word "occupier" has received different meanings varying with the object of the enactment. Ordinarily, the tenant of premises is the "occupier" of them, although he may be personally absent from them. Thus, the occupier of land in a parish, but living out of it, was held compellable to receive a parish apprentice (*d*). But in the Bill of Sales Act, which provides that personal chattels shall be deemed in the possession of the grantor of a bill of sale so long as they are on the premises "occupied" by him, actual personal occupation, and not merely tenancy is intended; and therefore the owner of chattels in rooms which he does not personally occupy is not in the apparent possession of them, within that Act (*e*).

This restriction of meaning may be carried still further to promote the real intention, and not to exceed the object and scope of the enactment. Thus, an Act which, reciting the inconveniences arising from

(*a*) Adams *v.* Gt. Western R. Co. 6 H. & N. 404; Taylor *v.* Crowland Gas Co. 11 Ex. 1.

(*b*) Shiels *v.* G. N. R. Co. 30 LJ. QB. 331; Brown *v.* London and N. W. R. Co. 32 LJ. QB. 318.

(*c*) Keysham *v.* Baker, 33 LJ. Ex. 41; see also Aberystwith Pier Co. *v.* Cooper, 35 LJ. QB. 44.

(*d*) *Per* Bayley J., 4 B. & C. 958.

(*e*) Robinson *v.* Briggs, LR. 6 Ex. 1.

churchwardens and overseers making clandestine rates, enacted that those officers should permit "every inha-"bitant" of the parish to inspect the rates, under a penalty for refusal, was held not to apply to a refusal to one of the churchwardens, who was also an inhabitant. As the object of the Act was limited to the protection of those inhabitants only who had previously no access to the rates, (which the churchwardens had,) the meaning of the term "inhabitants" was limited to them (*a*). So, an Act which prohibited the drawing of bills of exchange of shorter date than six-months, by "partnerships" of more than six persons, was held to apply only to banking partnerships and not to other commercial firms; because the object of the Act, as shown by the preamble, was only to protect the monopoly of the Bank of England (*b*), and the only partnerships in its contemplation, it was reasonable to presume, were those which might encroach on that monopoly. So, a bye law which authorised the election of "any person" to be Chamberlain of the City, would be construed as limited to eligible persons, and not as inconsistent with an earlier bye law which limited the appointment to persons possessed of a certain qualification (*c*).

(*a*) Wethered *v.* Calcutt, 5 Scott N. R. 409; see also R. *v.* Masterton, 6 A. & E. 153.

(*b*) Wigan *v.* Fowler, 1 Stark. 459, 2 Chit. 128; Perring *v.* Dunston, R. & Moo. 426; sed comp. Broughton *v.* The Manchester Waterworks Co. 3 B. & A. 1.

(*c*) Tobacco Pipe Makers *v.* Woodroffe, 7 B. & C. 838, overruling Oxford *v.* Wildgoose, 3 Lev. 293.

In a recent case, the majority of the Judges of the Queen's Bench went further than the Chief Justice thought legitimate, in giving an unusually and perhaps even artificial meaning to a word, for the purpose of keeping within the apparent scope of the Act. The treaty between Great Britain and the United States of 1842, and the 6 & 7 Vict. c. 76, passed to give the Executive the necessary powers for carrying its provisions into effect, having provided that each State should, on the requisition of the other, deliver up to justice all persons who, being charged with murder, "piracy," or other crimes therein mentioned, committed within the jurisdiction of either State, should seek an asylum, or be found within the territories of the other; it was held that the word "piracy" was confined to those acts which are declared piracy by the municipal law of either country, such as slave-trading, and did not include those which are piracy in the ordinary and primary sense of the word, that is, *jure gentium*: for as the latter offence was within the jurisdiction of all States and was triable by all, and the offenders could not, consequently, be said to seek an asylum in any State, since none could be a place of safety for them, that species of the crime was not within the mischief intended to be remedied by the treaty or the Act (*a*).

Sometimes, however, the meaning of words may be extended beyond that which is usually and popularly

(*a*) *Re* Ternan, 33 LJ. MC. 201, 5 B & S. 645. See also Kwok Ah Sing *v.* Att.-Genl., LR. 5 PC. 179.

attached to them, when such seems to meet more completely the object and the intention of the legislature. Thus, Acts which gave a "single woman" who had a bastard child the right to sue the putative father for its maintenance, have been held to include not only a widow (*a*), but a married woman living apart from her husband (*b*); for the general object of the Act being to compel men to contribute to the support of their illegitimate offspring, even a married woman living under circumstances, incompatible with marital access, though not in popular language a single woman, is nevertheless, for the purposes of the Act, and therefore in the contemplation of the legislature, as "single" as a woman who has no husband. An Act which required a railway company to make for the accommodation of the owners and occupiers of the adjacent lands, sufficient fences for protecting the lands from trespass, and the cattle of the owners and occupiers from straying thereout, was held to include in the term "occupier" a person who had put his cattle on land with the licence of the occupier (*c*). And the same word, even when coupled with "owner," has been construed, with the view of promoting the object of the enactment and reaching the mischief it aimed

(*a*) Antony *v.* Cardenham, 2 Bott, 194; R. *v.* Wymondham, 2 QB. 541.

(*b*) R. *v.* Pilkington, 2 E. & B. 546, S. C. nom. Exp. Grimes, 22 LJ. MC. 153; R. *v.* Collingwood, 12 QB. 681; R. *v.* Luffe, 8 East, 193.

(*c*) Dawson *v.* Midland R. Co., 8 Ex. 8; and see Kitto *v.* Liskeard, QB. MT. 1874.

at, as including a person standing on a spot in a public park or place, where he had no more right to stand than any other person (*a*). The technical words "debt," "children," and "hospital," and others, have, in the same way, received wider meanings than strictly belongs to them, in order to meet more fully the objects of the legislature (*b*). The statutes which require notice of action for anything "done" under them, are construed as including an omission of an act which ought to be done as well as the commission of a wrongful one (*c*). Even Criminal Statutes, which are subject to the strictest construction, furnish illustrations of giving an extended meaning to a word (*d*).

(*a*) See Doggett *v.* Cattarns, 34 LJ. CP. 46; Bows *v.* Fenwick, LR. 9 CP. 339.

(*b*) See sup. pp. 51, 53.

(*c*) Wilson *v.* Halifax, L.R. 3 Ex. 114; Poulsum *v.* Thirst, LR. 2 CP. 449; see also Davis *v.* Curling, 8 QB. 286; Newton *v.* Ellis, 5 E. & B. 115.

(*d*) See ex. gr. R. *v.* Lloyd, 2 East PC. 1122, and other cases cited with it, inf.

CHAPTER III.

SECTION I.—CONSEQUENCES TO BE CONSIDERED—PRESUMPTION AGAINST AN ALTERATION OF THE LAW BEYOND THE SPECIFIC OBJECT OF THE ACT.

BEFORE adopting any proposed construction of a passage susceptible of more than one meaning, it is necessary to consider the effects or consequences which would result from it (*a*), for they do very often point out the genuine meaning of the words (*b*). There are certain objects which the legislature is presumed not to intend, and a construction which would lead to any of them is therefore to be avoided. How far the interpreter is to be influenced by such considerations in departing from the primary and literal meaning of the words and their grammatical construction may depend in a measure on the nature of the consequence to be avoided; but it may be laid down generally that it may be carried so far, and so far only as it serves the true interpretation of the intention.

(*a*) Grot. de B. & P. b. 2, c. 16, s. 4; U. S. *v.* Fisher, 2 Cranch, 390, *per* Cur.

(*b*) Puff. L. N. b. 5, c. 12, s. 8.

One of these presumptions, especially applicable to the interpretation of general words, is that the legislature does not intend any alteration in the law beyond what it explicitly declares (*a*), either in express terms or by unmistakeable implication; or, in other words, beyond the immediate scope and object of the statute. In all general matters beyond, the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness (*b*); and it would therefore be absurd to give any such effect to general words, simply because, in their widest and most abstract sense, they admit of such an interpretation. It is, therefore, an established rule of construction that general words and phrases, however wide and comprehensive in their literal sense, must be construed as bearing only on the immediate object of the Act, and as not altering the general policy of the law, unless, of course, no reasonable sense can be applied to them consistently with the intention of preserving that policy untouched (*c*). A statute, for instance, which in general terms enacted that "every person" who did a certain act should be adjudged a felon would not

(*a*) *Per* Trevor J. in Arthur *v.* Bokenham, 11 Mod. 150; see also Harbert's Case, 3 Rep. 13b.

(*b*) 2 Cranch, 390.

(*c*) *Per* Sir J. Romilly in Minet *v.* Leman, 20 Beav. 278; 24 LJ. Ch. 547.

include a lunatic (*a*). It would be in the last degree unreasonable to infer from the mere use of a wide but elastic expression, an intention to repeal the general principle of law that a lunatic is not responsible for his acts done during the loss of his reason. The word "person," therefore, would be limited to those who were in all respects accountable to our criminal law. For the same reason, an Act which provided that a mayor should not, by reason of his office, be ineligible as a town councillor or alderman, would not be construed as making him eligible when he acted in the judicial capacity of returning officer at the election; for it would not be a just construction of the general language used, or a legitimate inference from it, that the legislature intended to repeal by a mere side wind the principle of law that a man cannot be a judge in his own case (*b*). A statute which authorized "any" justices of the peace to try certain offences, would not authorize a justice to try any out of the territorial limits of his jurisdiction (*c*), or in which he had an interest, or which he was incapacitated by any other general principle of law from hearing (*d*), or to hear them by any other course of proceeding than that established by law (*e*).

(*a*) Eyston *v.* Studd, Plowd. 465, Bac. Ab. Stat. I. 6.

(*b*) R. *v.* Owens, 2 E. & E. 86, 28 LJ. QB. 316; R. *v.* Tewkesbury, LR. 3 QB. 639.

(*c*) *Re* Peerless, 1 QB. 153.

(*d*) Bonham's Case, 8 Rep. 118a; Great Charte *v.* Kennington, 2 Stra. 1173.

(*e*) Dalt. c. 6, s. 6.

SECT. II.—RESTRICTIVE EFFECT OF THE PRESUMPTION.

The most common effect of this presumption is to restrict the meaning of the language. Thus, the 39 Eliz. c. 5, which gave to "all persons" seised of lands in fee, power to found hospitals, would not be construed as conferring that power on corporate bodies which were disabled from alienation; though the word "persons" properly includes corporations, and the power in question extended to those corporate bodies which possessed the power of alienation, such as municipalities (*a*). The Wills Act of Hen. 8, which empowered "all persons" to devise their lands, did not legalise a devise of land to a corporation (*b*), nor would it have enabled lunatics or minors to make a will, even if the 33 & 34 Hen. 8, s. 14 had not been passed to prevent a different construction (*c*). The object of the legislature was, obviously, only to confer a new power of disposition on persons already of capacity to deal with their property, not to release from disability from disposing or taking those who were under such incapacity. The Statute of Limitations, however, would include all persons whether under incapacity to sue or

(*a*) 2 Inst. 721, Corp. of Newcastle *v.* The Atty.-Genl., 12 Cl. & F. 402.

(*b*) Jesus College Case, Duke, Charit. Uses, 78; Braneth *v.* Havering, Id. 83; Christ's Hospital *v.* Hawes, Id. 84.

(*c*) Beckford *v.* Wade, 17 Ves. 91.

not, unless expressly exempted (*a*). In making copyholds devisable, the Wills Act, 1 Vict. c. 26, was construed as not intended to interfere with the relation of lord and tenant; and it was consequently held that devised copyholds did not vest immediately in the devisee, but remained in the customary heir until the devisee's admittance (*b*).

So, it was held that the provision of the Statute of Limitations, 3 & 4 Will. 4, c. 27, s. 26, which deprives the owner of lands of the right of suing in equity for their recovery, on the ground of fraud, from a purchaser who did not know or have reason to believe that any such fraud had been committed, was to be construed subject to the presumption that the legislature had not intended, by its general language, to subvert the established principles of equity on the subject of constructive notice, and was therefore read as meaning that the purchaser did not know or have reason to believe, either by himself, or by some agent whose knowledge or reason to believe is, in equity, equivalent to his own (*c*).

A charitable provision for the support of "maimed" soldiers would not extend to soldiers who had been maimed in the service of a foreign state, or in punishment for a crime (*d*). A statute which enacted that

(*a*) Id. 92, Buckinghamshire *v.* Drury, Wilm. 194.

(*b*) Garland *v.* Meade, LR. 6 QB. 411; see also Bishop *v.* Curtis, 18 QB. 878.

(*c*) Vane *v.* Vane, LR. 8 Ch. 383.

(*d*) Duke, Charit. Uses, 134.

"every conveyance" in a particular form should be "valid," would not receive the sweeping effect, so foreign to its object, as that of curing a defect of title (*a*). The 12 Car. 2, c. 17, which enacted that all persons presented to benefices in the time of the Commonwealth, and who should conform as directed by the Act, should be confirmed therein, "notwithstanding any act or thing whatsoever," was obviously not intended to apply to a person who had been simoniacally presented (*b*). It is obvious that a literal construction would, in these cases, have carried the operation of the Act far beyond the intention.

So, the sixth section of the Habeas Corpus Act which, for the prevention of unjust vexation by reiterated commitments for the same offence, enacts that no person who has been discharged on habeas corpus shall be imprisoned again for "the same offence," except by the Court wherein he is bound by recognizances to appear, or other Court having jurisdiction in the cause, would not extend to a case where the discharge was made on the ground that the commitment had been made without jurisdiction, though the offence for which he was arrested on the second occasion was the same; for this was obviously beyond the object of the Act (*c*).

(*a*) Ward *v.* Scott, 3 Camp. 284.

(*b*) Crawley *v.* Philips, Sid. 232.

(*c*) Atty.-Genl. *v.* Kwok Ah Sing, LR. 5 PC. 179.

The 1 & 2 Vict. c. 110, s. 13, which enacts that a judgment against "any person" shall operate as a charge on lands, "rectories, advowsons, tithes and hereditaments" in which the judgment debtor has any interest, was held to apply only to lay rectories, advowsons and tithes; for the Act showed no intention of interfering with the 13 Eliz. c. 10, which makes void all chargings of ecclesiastical property in ecclesiastical hands (*a*). It was read as applying only to those debtors who had the power of charging their property. The Toleration Act, which exempts dissenters from prosecution in the ecclesiastical Courts for not conforming to the Church of England, does not exempt a clergyman of the Church who had seceded from it, from prosecution in those Courts for performing the Anglican church service in a dissenting chapel not licensed by the bishop; for this is a breach of discipline, and not within the scope and object of the Act (*b*). The Statute 27 Geo. 3, c. 44, which enacted that no suit should be commenced in any ecclesiastical court for incontinence or brawling after the expiration of eight months from the commission of the offence, would apply only to suits which might be brought against laymen as well as against clergymen; and would therefore apply to a suit against a clergyman, when its object was the reformation of

(*a*) Hawkins *v.* Gathercole, 6 MacN. De G. & G. 1, 11; 24 LJ. Ch. 332.

(*b*) Barnes *v.* Shore, 8 QB. 640.

his manners, or his soul's health. But it would not apply to a suit for deprivation for the same offences; for this is a matter of church government, foreign to the object and scope of the Statute (*a*). The provision of the Factors' Act, which enacts that "any agent intrusted with the possession of goods" shall be deemed their owner, so far as to give validity to a pledge of them, is confined by the general scope and object of the enactment to mercantile agents and transactions; and would therefore not give validity to a pledge of household furniture made, not in the way of trade, by an agent to whose possession it had been entrusted (*b*). An Act which empowered the directors of an incorporated company to make contracts and bargains with workmen, agents and undertakers, would be construed as conferring on them authority to bind the company without consulting their shareholders, by such transactions; but not as so altering the general law as to dispense with those formalities by which alone a corporation can bind itself to contracts, that is, by writing under the corporate seal (*c*).

In the 24 & 25 Vict. c. 96, which consolidates the law relating to larceny and analogous offences, the provision which imposes a penalty for "unlawfully and wilfully" killing a pigeon under circumstances not amounting to larceny, was construed as not ap-

(*a*) Free *v.* Burgoyne, 5 B. & C. 400.

(*b*) Wood *v.* Rowcliffe, 6 Hare, 191.

(*c*) London Waterworks Co. *v.* Bailey, 4 Bing. 283.

plying to a man who had intentionally and without legal justification shot his neighbour's pigeons which were in the habit of feeding upon his land; his object being to prevent a recurrence of the trespass. His act was "unlawful," in the sense that it was actionable; and it was undoubtedly "wilful" also; but as the object and scope of the Act was to punish crimes and not mere civil injuries, the word "unlawfully" was construed as "against the criminal law" (*a*). So, an Act which visited with fine and dismissal a road surveyor who demanded or wilfully received higher fees than those allowed by the Act, would not affect a surveyor who, under an honest mistake of fact, demanded a fee to which he was not entitled (*b*). An Act which empowered inspectors to inspect the scales, weights and measures of persons offering goods for sale and of seizing any found "light and unjust," was construed as limited to cases where the injustice was prejudicial to the buyer, but as not applying to a balance which gave seventeen ounces to the pound, that is, which was unjust against the seller; since the object and scope of the Act was limited to the protection of the former (*c*).

An Act which, after appointing trustees to pull down

(*a*) Taylor *v.* Newman, 4 B. & S. 89, 32 LJ. MC. 186.

(*b*) R. *v.* Badger, 6 E. & B. 13, 25 LJ. MC. 8.

(*c*) Brooke *v.* Shadgate, LR. 8 QB. 352. See Edwards *v.* Dick, B. & A. 212; East Gloucestershire R. Co. *v.* Bartholomew, LR. 3 Ex. 15.

and rebuild a parish church, authorised them to allot the pews and to sell the fee simple of such of them as were not appropriated by the Act, to the inhabitants of the parish, with power to the owners to dispose of them, was held not to authorise a conveyance of the soil and freehold of the land on which the pews stood, but only the easement, or right to sit in the pew during divine service (*a*). And where a church was built, under a similar Act, by subscribers in whom the freehold was vested, and the trustees had power to sell the pews; and a subsequent Act, reciting that doubts had arisen as to the estate and interest which the subscribers and proprietors had in the pews, enacted that the fee simple should be vested in them, it was held that it was not the freehold interest in the soil that was vested in them, but a special interest created by Parliament in the easement (*b*).

The same general principle appears to govern the class of cases which establish that enactments which require railway or other companies to make to persons interested in hereditaments taken or injuriously affected by the companies, full compensation not only for the land but for all damage sustained by such persons by reason of the exercise of such parliamentary powers, are limited to cases where the damage would have been actionable but for the Act, and relates, not to the person or business of the party prejudiced, but to his

(*a*) Hinde *v.* Chorlton, LR. 2 CP. 104.

(*b*) Brumfitt *v.* Roberts, LR. 5 CP. 224.

estate or right in the land in statu quo, without regard to any use to which it might be put (*a*).

The Act which requires the Registration of Bills of Sales of personal chattels, under which expression fixtures are expressly included, has given rise to decisions governed by the principle in question. The object of the enactment obviously did not extend to requiring the registration of every mortgage under which fixtures might happen to pass, for this would include most mortgages of real property; and it has been held that the Act applies only to cases where the fixtures are dealt with as separate things. Accordingly, a mortgage of a house for a term of years, with such a separate assignment of the fixtures, that the mortgagee might sever and deal with them as distinct from the house, would require registration (*b*); but a mortgage for a term of years of a house with its fixtures, and with a general power of sale over the mortgaged property, not authorising a separate dealing by the mortgagee with the fixtures, would not require registration (*c*).

(*a*) See *per* Willes J. in Beckett *v.* The Midland R. Co., LR. 3 CP. 94; Ricket *v.* Metrop. R. Co., LR. 2 HL. 175; Hall *v.* Bristol, LR. 2 CP. 322; R. *v.* Vaughan, LR. 4 QB. 190; R. *v.* Metrop. Board, Id. 368; R. *v.* Cambrian R. Co., LR. 6 QB. 422. Comp. MacCarthy *v.* Metrop. Board, LR. 8 CP. 191; affirmed in H.L. 43 LJ.CP. 385; Glasgow R. Co. *v.* Hunter, LR. 2 Sc. App. 78.

(*b*) Hawtrey *v.* Butlin, LR. 8 QB. 290, Exp. Daglish, LR. 8 Ch. 1072.

(*c*) Exp. Barclay, LR. 9 Ch. 576.

The enactment which gave a vote for the election of town councillors to every "person" of full age who had occupied a house for a certain time, and provided that words importing the masculine gender should include females for all purposes relating to the right to vote, was held, having regard to the general scope of the Act, to remove only that disability which was founded on sex, but not to affect that which was the result of marriage as well as sex, and therefore not to give the right of voting to married women (*a*). The Metropolitan Building Act of 1855, which gives a right to raise any party structure authorised by the Act, on condition of "making good all damage" occasioned thereby to the adjoining premises, was held not to authorise the raising of a structure which obstructed the ancient lights of the adjoining premises; for the only damage contemplated by the Act was structural and not that which resulted from the invasion of a right. And, having regard to the scope of the enactment, the expression "making good" was understood to mean that the adjoining premises were to be restored to their original state, not that pecuniary compensation should be made (*b*).

The Act 16 & 17 Vict. c. 96; for regulating the care and treatment of lunatics, furnishes a remarkable illustration of the principle under consideration. Its pro-

(*a*) R. *v.* Harrald, LR. 7 QB. 361; see Chorlton *v.* Lings, LR. 4 CP. 374.

(*b*) Crofts *v.* Haldane, LR. 2 QB. 194.

vision that any superintendent, officer, nurse or servant of any registered hospital or licensed house, "or any person having the care or charge of any single patient," who ill-treated a patient, was held not to apply to a husband who ill-treats his lunatic wife; for it was not within the scope of the Act to deal with cases where the custody of the lunatic was owing to domestic relationship, and the woman was in her husband's custody, not because she was mad, but because she was his wife (*a*). But the Act would apply to a man who ill-treated his lunatic brother in his charge, for he has no legal custody of him by virtue of his relationship (*b*).

With few exceptions, a guilty mind is an essential element in a breach of a criminal or penal law; and unless a contrary intention is expressed or plainly to be inferred from the statute, it would be construed as silently requiring that this element should be imported into the definition of the offence (*c*). Thus, an Act which punished breaking out of prison, would not be construed as applying to a prisoner who escaped, or to a jailor who suffered him to escape from a prison on fire; unless, indeed, it had been set on fire by him or with his privity, for the purpose of enabling him to escape. It would be unreasonable to infer from the general language of the legislature an intention

(*a*) R. *v.* Rundle, Dears. 482, 24 LJ. MC. 129.

(*b*) R. *v.* Porter, Leigh & C. 394, 33 LJ. MC. 126.

(*c*) See *ex. gr.* Dickinson *v.* Fletcher, 43 LJ. MC. 25.

that the prisoner should be punished for saving himself from being burnt alive (*a*). An Act which makes a revolt on board ship piracy, would not apply to a revolt which was necessary to prevent the captain of a ship from wrongfully killing or wounding persons on board (*b*). In both instances, the criminal intention would be wanting. In the latter, indeed, the act would be a duty (*c*).

In the same way, the 9 & 10 Will. 3, c. 14, which enacted that any person found in possession of naval stores bearing the Admiralty mark should be liable to a penalty, was construed as subject to the general principle that a criminal intention or knowledge is essential, and therefore as not extending to a person found in possession of such stores, unless he knew that they bore the mark (*d*). So an Act which imposed a penalty on every person who should send gunpowder or similar dangerous goods by railway without marking their nature on the outside of the package, would not be broken, unless the sender had knowledge of the nature of the goods (*e*). So, the Contagious Diseases (Animals) Act, and an Order of Council under it, which imposed a penalty on any person having in his possession an animal affected with a contagious disease who did

(*a*) 2 Inst. 590.

(*b*) R. *v.* Rose, 2 Cox C. C. 329.

(*c*) The Shepherdess, 5 Rob. 266.

(*d*) R. *v.* Sleep, 30 LJ. MC. 171; comp. R. *v.* Woodrow, 15 M. & W. 404.

(*e*) Hearne *v.* Garton, 28 LJ. MC. 266; 2 E. & E. 66.

not with "all practicable speed" give notice of it to a constable, was held to apply only when the person knew that the animal was diseased (*a*). But here the only speed "reasonably practicable" would be that which was computed from when the knowledge was acquired. A railway bye-law (under 8 Vict. c. 20, s. 109), which prohibited passengers from entering a carriage without obtaining a ticket, to be shewn when required, and imposed a penalty upon any passenger who did not produce it, or who failed to pay the fare from the place whence the train had started, was held not to apply to a passenger travelling without a ticket, but without an intention to defraud (*b*). It was a question whether an Act which imposed a penalty on a publican for selling beer at certain hours to persons not *bonâ fide* travellers, applied where the publican was under an honest though mistaken belief that the persons to whom he sold were *bonâ fide* travellers (*c*).

So, an Act which made it criminal unlawfully to take an unmarried girl under sixteen from her parents or guardians, would not apply to a man who took away such a girl without lawful authority, but in the honest belief that he was entitled to her custody (*d*); nor even to one who took her away in ignorance that

(*a*) Nicolls *v.* Hall, LR. 8 CP. 322; and see Core *v.* James, LR. 7 QB. 138, and Dickenson *v.* Fletcher, LR. 9 CP. 1.

(*b*) Dearden *v.* Townsend, LR. 1 QB. 11.

(*c*) Copley *v.* Brown, LR. 5 CP. 489; Roberts *v.* Humphries, LR. 8 Q.B. 483.

(*d*) R. *v.* Tinkler, 1 Fost. & F. 513.

she had parents in existence (*a*). On the same principle, an Act which made it felony for persons tumultuously assembled to demolish a church or dwelling would not be broken if the demolition was done in the *bonâ fide* assertion of a right, though there was a riot in doing it (*b*).

But this presumption is of little weight where a different intention is to be inferred from other considerations. Thus, if one section of an Act imposed a penalty for selling, as unadulterated, articles of food which are adulterated; and another declared that a person who sold an article of food knowing it to have been mixed with another substance to increase its bulk or weight, and did not, in selling it, declare the admixture to the purchaser, should be deemed to have sold an adulterated article; the former section would be broken by the sale of an adulterated article, though the seller was ignorant of the adulteration, the different wording of the two sections sufficiently indicating the intention (*c*). A man is liable to conviction for assaulting a police officer in the execution of his duty, though the latter was in plain clothes, and the former did not know that he was an officer (*d*). And a man who committed an offence on a girl, when the

(*a*) R. *v.* Hibbert, LR. 1 CC. 184; R. *v.* Green, 3 Fost. & F. 274.

(*b*) R. *v.* Phillips, 2 Moo. C.C. 235; R. *v.* Langford, C. & M. 602. See also Rider *v.* Wood, 2 E. & E. 338.

(*c*) Fitzpatrick *v.* Kelly, LR. 8 QB. 337. See also Core *v.* James, LR. 7 QB. 135; Roberts *v.* Egerton, LR. 9 Q.B. 494.

(*d*) R. *v.* Forbes, 10 Cox 362.

age of the girl was material, would not escape by ignorance of the fact that she was within the protected age (*a*). So, the owner of works carried on for his profit by his agents and workmen, is liable to indictment for a nuisance committed by them in carrying on the works, though it was done without his knowledge, and even contrary to his general orders (*b*). An Act (5 & 6 Will. 4, c. 76, s. 77,) which imposed a penalty on any parish officer who supplied for his own profit any goods to be given in parochial relief, was held to include a guardian whose partner in trade had, without the guardian's knowledge, knowingly sold goods for that purpose to the parish (*c*).

Sometimes, to keep the Act within the limits of its object, and not to disturb the existing law beyond what that object requires, it is construed as operative only between certain persons, or under certain states of fact, though the language expresses no such circumscription of the field of its operation. The Bill of Sales Act, for instance, which requires, among other things, that when a bill of sale is made subject to a declaration of trust, the declaration shall be registered as well as the bill, was held to apply only to declarations of trust by the grantee for the grantor, but not to trusts declared by the grantee in favour of other persons; the

(*a*) R. *v.* Olifier, Id. 402; R. *v.* Robins, 1 C. & K. 456.

(*b*) R. *v.* Stephens, LR. 1 QB. 792.

(*c*) Davies *v.* Harvey, LR. 9 QB. 433; Stanley *v.* Dodd, 1 D. & R. 184.

object of the Act being only to protect creditors against sham bills of sale, and being completely attained by requiring the registration of the first-mentioned trusts; while the registration of any others was foreign to the purposes of the Act (*a*). So, the general language of the Merchant Shipping Act of 1854, s. 299, which provides that, if damage arises to person or property from non-observance of the sailing rules, it should be considered as the wilful default of the person in charge of the deck at the time, was confined by a due regard to the object in view, to the regulation of the rights of the owners of ships in cases of collision, and therefore held not to affect the relations between the master and his owners, so as to make the former guilty of barratry, which would have been altogether foreign to the scope of the Act (*b*).

The enactment (16 & 17 Vict. c. 59, s. 19) which makes presentment of any draft on a banker payable to order or on demand, if purporting to be indorsed (though a forgery) by the payee, a sufficient authority to the banker to pay the amount, is in the same way limited in its effect, as in its object, to the relations between banker and customer; and does not prevent the latter from recovering his money from the person who received it (*c*). The 16th sec-

(*a*) Robinson *v.* Collingwood, 34 LJ. CP. 18, 17 CB. NS. 777. See also Hodson *v.* Sharpe, 10 East, 350.

(*b*) Grills *v.* The General Iron Screw Co., LR. 1 CP. 600, 3 CP. 476.

(*c*) Ogden *v.* Benas, 43 LJ. CP. 259.

tion of the Companies Clauses Consolidation Act, which provides that no shareholder shall be entitled to transfer any share after a call, until he has paid up all calls due on all his shares, is only a protection to the company, giving it a lien or charge upon the shares; but it does not affect the validity of a transfer, as regards the creditors of the company, if the company has assented to it (*a*). So, it has been held that the provisions of a railway Act which place the management of the company's affairs in the hands of a certain number of directors, were intended for the protection of the shareholders merely, and that it was not open to a stranger to object that they had not been complied with (*b*). The 153rd section of the Companies Act of 1862, which declares "void" every transfer of shares in a company which is being wound up, unless the Court otherwise orders, was held not to prevent a broker who had bought and paid for shares in a company so situated from recovering from his principal the money so paid (*c*).

In the same way, the Bankruptcy and Insolvency Acts, which, in clear and unequivocal terms vested in the assignee all the property, both present and future, of the bankrupt or insolvent, were held only to establish the right of the assignee to the future property, as between himself and the bankrupt or

(*a*) Littledale's Case, LR. 9 Ch. 257.

(*b*) Thames Haven Co. *v.* Rose, 4 M. & Gr. 552.

(*c*) Chapman *v.* Shepherd, LR. 2 CP. 228.

insolvent; but not to affect the right of the bankrupt or insolvent, as between himself and his debtor, unless the assignee interfered, to sue for a debt which accrued due after the vesting of the property in the assignee; and the provision contained in the Acts that the bankrupt or insolvent should not have the power to recover such debts, was similarly limited in effect (*a*). The Bankruptcy Act of 1869, which enacts (sect. 23) that the trustee in bankruptcy may disclaim any interest of the bankrupt, and that the property is to be deemed surrendered on the day of the disclaimer, was held not to affect the right of the lessor to sue the original lessee from whom the bankrupt held by assignment (*b*); these rights and liabilities being foreign to the scope of the Act. And yet, as the Act did not provide that in such a case the surrender should re-vest the property in the lessee, it would seem to vest it in the lessor, and thus to entitle the latter to both the property and the rent (*c*). The 38th section of the Companies Act of 1867, which requires that every prospectus shall specify all contracts entered into by the company, and declares every prospectus which does not specify them fraudulent on the part of the promoters and directors who knowingly issued it, as regards persons taking shares, was held to be only a protection to

(*a*) Herbert *v.* Sayer, 5 QB. 965; Jackson *v.* Burnham, 8 Ex. 173.

(*b*) Smyth *v.* North, LR. 7 Ex. 242.

(*c*) *Per* Bramwell B. Id.

shareholders, but not to create any duty towards bondholders (*a*).

So, the Stamp Acts, which exclude unstamped documents from being given in evidence, have been held not to extend to cases where the validity of the document is impugned on the ground of fraud or illegality (*b*). So, the 30 Vict. c. 23, s. 7, which invalidates all contracts of sea assurance unless expressed in a policy, and (s. 9) prohibits pleading or giving in evidence any policy which is not stamped, does not prevent the admission of the "slip" in evidence on a collateral question of fraud or misrepresentation (*c*).

In the same spirit, the operation of the Act 7 Anne, c. 12, which, with the view of securing the inviolability accorded by the law of nations to the ambassadors of foreign states, enacted that all writs and processes whereby an ambassador or his servant might be arrested, or his goods seized should be null and void, was held not to extend beyond what might be necessary for the protection of the rank, duties, and religion of the ambassador; and not to protect his servant, who rented a house, part of which he let in lodgings, from having his goods taken by distress for non-payment of a parochial rate. Such a house was

(*a*) Cornell *v.* Hay, LR. 8 CP. 328.

(*b*) R. *v.* Hawkesworth, 1 TR. 450, 2 East, PC. 955; R. *v.* Gompertz, 9 QB. 824; Ponsford *v.* Walton, LR. 3 CP. 167.

(*c*) Ionides *v.* The Pacific Insurance Co., LR. 7 QB. 517.

not one merely necessary for the servant's residence; and to extend the operation of the Act to such a case would have been to cover ground foreign to its scope and object (*a*).

SECT. III.—ENLARGING EFFECT OF THE PRESUMPTION AGAINST DISTURBING THE LAW.

Although the presumption against an intention to alter the general law is usually restrictive, in various ways, of the meaning of the language of a statute, there are some few cases in which it has the opposite effect, and the language is read in a larger sense than would popularly be given to it.

For instance, a statute which requires something to be done by a person, would be complied with, in general, if the thing were done by another for him and by his authority; for it would be presumed that there was no intention to prevent the application of the general principle of law that *qui facit per alium facit per se;* unless there was something either in the language or in the object of the statute which showed that a personal act was intended. On this ground, an Act of Parliament which requires that notice of appeal shall be given by churchwardens, is complied with if given by their attorney (*b*). So, the

(*a*) Novello *v.* Toogood, 1 B. & C. 554.

(*b*) R. *v.* Middlesex, 1 L. M. & P. 621; R. *v.* Carew, 20 LJ. MC. 44n.; R. *v.* Kent, 8 QB. 315.

Dramatic Copyright Act, 3 & 4 Will. 4, c. 15, which requires the written consent of the author of a drama to its representation, would be sufficiently complied with if the consent were given by the author's agent (*a*).

The general principle is well illustrated by two decisions under the 6 & 7 Vict. c. 18, which required that the person who objected to a voter should sign a notice of his objection, and deliver it to the postmaster. This was held to require personal signature, but not personal delivery or receipt. It was material that the person objected to should be able to ascertain that he really was objected to by the objector, which he could not so easily do if a signature by an agent was admitted; but there was no valid reason for supposing that the legislature did not intend to give effect to the rule *qui facit per alium facit per se*, in the case of the mere delivery (*b*). The knowledge of the servant may be constructively that of the master within the meaning of an Act, even when making the master penally responsible (*c*). An Act (18 & 19 Vict. c. 121) which authorises justices to summon a person by whose act a nuisance arises, or, if that person cannot be ascertained, the occupier of the premises in which it exists, was held to authorize the summoning of the

(*a*) Morton *v.* Copeland, 16 CB. 517, 24 LJ. CP. 169.

(*b*) Cuming *v.* Toms, 7 M. & Gr. 29 and 88.

(*c*) Core *v.* James, LJ. 7 QB. 135, *per* Lush J.; R. *v.* Stephens, LR. 1 QB. 702.

occupier, if the person who had actually done the act was his servant, since in law the act of the latter is that of the former (*a*).

On the other hand, Lord Tenterden's Act, 9 Geo. 4, which requires an acknowledgment "signed by the party chargeable thereby," to take a debt out of the Statute of Limitations, has been held to require personal signature, and not to admit of a signature by an agent (*b*). But this construction was based partly on the circumstance that another Statute of Limitations made express mention of an agent (*c*). Where an Act required that notices should be signed by certain public trustees, or by their clerk, it was held that the signature of the clerk of their clerk, who had a general authority from his employer to sign all documents issuing from his office, was not a compliance with the Act (*d*).

Again, the widest operation may be given to a remedial statute, which the language admits, where the general object is more completely served by it. Thus, the 39th section of the 3 & 4 W. 4, c. 42, which after depriving the parties to a reference under a rule of Court or judge's order, or order of *nisi prius*, of the

(*a*) Barnes *v.* Ackroyd, LR. 7 QB. 474.

(*b*) Hyde *v.* Johnson, 2 Bing. NC. 778. See also Swift *v.* Jewsbury, LR. 9 QB. 301; Williams *v.* Mason, 28 L. Times, 232; Barwick *v.* London S. Bank, LR. 2 Ex. 259.

(*c*) Sup. p. 32.

(*d*) Miles *v.* Bough, 3 QB. 845.

power which they formerly had, of revoking the authority of their arbitrator, enacted that a judge might from time to time enlarge the time for the arbitrator to make his award, was at first thought confined to cases where a revocation had been attempted (*a*); or, at all events, was applicable only where the arbitrator had no power to enlarge the time, or had not yet made his award (*b*); but it was afterwards held that a judge had power to enlarge the time in all references made by judicial order (*c*); and to do so even after the arbitrator had issued his award after the time to which he was limited had expired, and the award was consequently, so far, a nullity (*d*).

Except in some few cases where a statute has fallen under the principle of excessively strict construction, the language of a statute is generally extended to new things which were not known and could not have been contemplated by the legislature when it was passed. This occurs when the Act deals with a genus, and the thing which afterwards comes into existence is a species of it (*e*). Thus, the provision of Magna Charta which exempts lords from the liability of hav-

(*a*) Potter *v.* Newman, 2 C. M. & R. 742.

(*b*) *Per* Tindal, C. J., in Lambert *v.* Hutchinson, 2 M. & Gr. 858, and *per* Patteson, J. in Doe *v.* Powell, 7 Dowl. 539.

(*c*) Leslie *v.* Richardson, 6 CB. 378; 6 D. & L. 91.

(*d*) Browne *v.* Collyer, 2 L. M. & P. 470; Ward *v.* Secretary of State for India, 32 LJ. QB. 53; Lord *v.* Lee, LR. 3 QB. 404.

(*e*) *Per* Bovill, C. J. in R. *v.* Smith, LR. 1 CC. 170.

ing their carts taken for carriage was held to extend to degrees of nobility not known when it was made, as dukes, marquises, and viscounts (*a*). When the widow of a copyholder became entitled to dower by custom, she became entitled to all the incidents of dower, such as, among others, a right of action for damages, under the Statute of Merton, when deforced of her dower (*b*). The 13 Eliz. c. 5, which made void as against creditors, transfers of lands, goods and chattels, did not originally apply to copyholds or choses in action, as these were not seizable in execution (*c*); but when they were made subject to be so taken (1 & 2 Vict. c. 110), they fell within the operation of the Act (*d*). The Act of Geo. 2, which protects copyright in engravings by a penalty for piratically engraving, etching, or otherwise, or "in any other "manner" copying them, extends to copies taken by the recent invention of photography (*e*).

Another case in which the language of a statute receives an enlarged construction, is where the statute would otherwise be open to evasion.

(*a*) 2 Inst. 35.

(*b*) Shaw *v.* Thompson, 4 Rep. 326.

(*c*) Sims *v.* Thomas, 12 A. & E. 536.

(*d*) Norcutt *v.* Dodd, Cr. & Ph. 100; Barrack *v.* McCulloch, 26 LJ. Ch. 105, 3 K. & J. 110; R. *v.* Smith, LR. 1 CC. 270; *per* Bovill, C. J.

(*e*) Gambart *v.* Ball, 32 LJ. CP. 166; Graves *v.* Ashford, LR. 2 CP. 410; Atty.-Gen. *v.* Lockwood, 9 M. & W. 378.

CHAPTER IV.

SECTION I.—CONSTRUCTION TO PREVENT EVASION.

To carry out effectually the object of a statute, it must be so construed, so far as the language will admit, as to reach and defeat all attempts to do or avoid in an indirect or circuitous manner that which it has prohibited or enjoined (*a*). *In fraudem legis facit, qui, salvis verbis legis, sententiam ejus circumvenit* (*b*) ; and a statute is to be understood as extending to all such circumventions, and rendering them unavailing. *Quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud.* The principle is, that whenever it can be shown that the acts of the parties are adopted for the purpose of effecting a thing which is prohibited, and the thing prohibited is in consequence effected, the parties have done that which they have purposely caused, though they may have done it indirectly (*c*). Whenever the thing done is substantially that which was prohibited, it is void, not because it comes within the spirit of the

(*a*) Bac. Ab. Statute J.; Com. Dig. Parlmt. R. 28.

(*b*) Dig. 1, 3, 29.

(*c*) *Per* Blackburn, J. in Jeffries *v.* Alexander, 31 LJ. Ch. 14.

statute, or tends to effect the object which the statute meant to prohibit, but because, according to the true construction of the statute, it is the thing thereby prohibited (*a*). Whenever Courts see such attempts at concealment, "they brush away the cobweb varnish," and show the transaction in its true light (*b*). They see things as ordinary men do (*c*), and like ordinary men see through them also. Whatever might be the form or colour of the transaction, the law looks to the substance of it (*d*). Thus, when the Usury Act was in force, it was said that if the contract really was an usurious loan of money, the wit of man could not find a shift to take it out of the Act (*e*), and accordingly transactions which were ostensibly a sale of land (*f*), of goods (*g*), or of stock (*h*), or a lease (*i*), or an agency (*k*), or a partnership (*l*), when in reality usurious loans, were held to fall within the Act. So, if a

(*a*) *Per* Lord Cranworth in Philpott *v.* St. George's Hospital, 6 HL. 338, 27 LJ. Ch. 72.

(*b*) *Per* Wilmot, C. J. in Collins *v.* Blantern, 2 Wils. 349.

(*c*) *Per* Brougham in Warner *v.* Armstrong, 3 M. & K. 45.

(*d*) *Per* Lord Tenterden in Solarte *v.* Melville, 1 Man. & Ry. 204.

(*e*) *Per* Lord Mansfield in Floyer *v.* Edwards, Cowp. 114.

(*f*) Doe *v.* Gooch, 3 B. & A. 664; Doe *v.* Chambers, 4 Camp. 1.

(*g*) Floyer *v.* Edwards, ubi sup.; Davis *v.* Hardacre, 2 Camp. 375; Harvey *v.* Archbold, 3 B. & C. 626.

(*h*) Tate *v.* Wellings, 3 TR. 531; Bolders *v.* Jackson, 11 East, 612; White *v.* Wright, 3 B. & C. 273.

(*i*) Bedo *v.* Sanderson, Cro. Jac. 440; Jestons *v.* Brooks, Cowp. 793.

(*k*) Harris *v.* Boston, 2 Camp. 348.

(*l*) Enderby *v.* Gilpin, 5 B. Moo. 571.

contract be a wager in substance, no matter how the end is brought about, it would be void, though the object were ever so cunningly concealed in the form given to the transaction (*a*). The Acts which protected the monopoly of the Bank of England by prohibiting bodies of more than six persons "to borrow, "owe, or take up money on their bills or notes, payable at less than six months from the borrowing," were construed to make it illegal for such a body of bankers to accept a customer's bill at less than six months; for the effect of such a transaction would admit of competition with the Bank of England by the issue of bills and notes (*b*). And they were also held to prohibit a joint stock bank from engaging with a foreign bank that their manager, who was not a partner, should accept the bills of the foreign bank, and that they would provide funds for their payment (*c*). All such transactions were held to come more or less directly within the prohibition to "owe, borrow, or take up money on bills or notes" (*d*). A tenant who covenanted not to assign his lease without his landlord's licence, would be held to have broken his covenant by giving a warrant of attorney to con-

(*a*) Grisewood *v.* Blane, 11 CB. 538, comp. *Re* Phillips, 30 LJ. Bcy. 1. *Per* Wilde B. in Jeffries *v.* Alexander, 31 LJ. Ch. 13.

(*b*) Anderson *v.* Bank of England, 3 Bing. NC. 539.

(*c*) Booth *v.* Bank of England, 7 C. & F. 509; Exp. Randleson, 1 Mont. & M. 86.

(*d*) See also O'Connor *v.* Bradshaw, 5 Ex. 882.

fess judgment, if he gave it for the express purpose of enabling the judgment creditor to take the lease in execution; for this was, in effect and intention, an assignment of the lease (*a*). The transaction would be unobjectionable if divested of the intent to break the covenant (*b*). A similar warrant of attorney, given by an insolvent to enable a favoured creditor to take his goods in execution, would, in the same way, be within the provisions against fraudulent transfers of property (*c*).

The Mortmain Act of Geo. 2, which prohibits the disposition to a charity, of land, or money to be laid out in the purchase of land, otherwise than by deed executed twelve months before the donor's death, to be enrolled within six months from its execution, and to take effect immediately, and without power of revocation or any reservation for the benefit of the donor, has frequently been the subject of such experiments. Thus, a bequest of money to the committee of a school on condition that they would provide land for a charitable purpose, would fall within the Act, for such a transaction differs but in name from a purchase of the land and a devise of it (*d*). The testator did not, indeed, directly devise the land, but he gave money

(*a*) Doe *v.* Carter, 8 TR. 300.

(*b*) Id. 57.

(*c*) Sharpe *v.* Thomas, 6 Bing. 416; Croft *v.* Lumley, 6 HL. 672, 27 LJ. QB. 321.

(*d*) Atty.-Genl. *v.* Davies, 9 Ves. 535; and see the judgment of Lord Cranworth in Philpott *v.* St. George's Hospital, 6 HL. 349.

in consideration of land being given to a charity, which was substantially the same thing. So, if money were bequeathed to be laid out in building houses, where there was no land already in mortmain (*a*) to build them on, such a bequest would be construed as but an indirect instruction to purchase land for the purpose (*b*). Where the owner of land executed a deed, which he kept concealed till his death, whereby he covenanted that he or his executors would pay to certain trustees for certain charitable purposes, a large sum of money, which would necessarily have to be raised out of his land, this was held to fall within the prohibition of the statute. The creation of a fictitious debt on which execution might issue, and the land be taken, was but an indirect mode of making a gift of the land (*c*).

It has been held that if a woman pregnant with an illegitimate child be fraudulently removed by the parish officers to another parish, the child's settlement is not the parish where it was born, but that from which the mother was removed (*d*). Where a woman, after failing to obtain a bastardy order where she resided, removed to a neighbouring borough for the

(*a*) Comp. Brodie *v.* Chandos, 1 Bro. C. C. 444n.; and Pritchard *v.* Arbouin, 3 Russ. 456.

(*b*) Atty.-Genl. *v.* Tyndall, Ambl. 614; Mather *v.* Scott, 2 Keen, 172; Giblett *v.* Hobson, 3 M. & K. 517.

(*c*) Jeffries *v.* Alexander, 8 HL. 594, 31 LJ. Ch. 9.

(*d*) Masters *v.* Child, 3 Salk. 66; Tewkesbury *v.* Twyning, 2 Bott. 3; comp. R. *v.* Mattersey, 4 B. & Ad. 211, and R. *v.* Birmingham, 8 B. & C. 29.

avowed purpose of trying to get the order there, it was held that the justices of the borough had not jurisdiction to make it, under the Act which gives such authority to justices of the place where the woman "resides" (*a*). It would have been different if she had not removed for the sole object of getting into another jurisdiction (*b*).

On this general principle, the Courts have repeatedly refused to review by mandamus, or otherwise, the proceedings of inferior Courts, when the writ of certiorari has been taken away (*c*). Where the payment of rates is made a matter of personal qualification, the Act would not be complied with if they were paid by another person on behalf of him who claims the qualification (*d*).

It is, however, essential not to confound what is actually or virtually prohibited or enjoined by the language, with what is really beyond its contemplation, though it may be within the scope or policy of the Act; for it is only to the former case that the principle under consideration applies, and not to cases where, however manifest the object of the Act may be, the language is not co-extensive with it. Thus, where a testator after devising a piece of land in a

(*a*) R. *v.* Myott, 32 LJ. MC. 138.

(*b*) R. *v.* Hughes, 26 LJ. MC. 133; Massey *v.* Burton, 27 LJ. Ex. 101.

(*c*) R. *v.* Yorkshire, 1 A. & E. 563; R. *v.* Eaton, 2 TR. 472; R. *v.* Yorkshire, 5 B. & Ad. 1003.

(*d*) R. *v.* Bridgnorth, 10 A. & E. 66; Durant *v.* Withers, LR. 9 CP. 257.

certain hamlet to a person in fee, directed that if any person should, within twelve months after the testator's decease, at his or her own expense, purchase and give a suitable piece of land for almshouses, the trustees of the will should pay a sum of money to the charity so instituted, but so that no part should be laid out in the purchase of land, it was held that the bequest was valid, and did not fall within the Mortmain Act (*a*).

When the Act is in derogation or restriction of the legal rights of the subject, it is not evading it to keep outside of it (*b*). A beershop-keeper who is licensed to sell beer only to be drunk off the premises, evades the Act if he sells beer, to be drunk on a bench which he provides for his customers close to his shop; the intention makes it, substantially and in effect, a sale for consumption on the premises (*c*). But a mere sale, through a window, to a person who stood on the road outside, would not be an evasion, though the buyer drank the beer immediately on receiving it (*d*). The occupier of a field adjoining a turnpike does not evade, though he avoids payment of toll, by making a semicircular road between two gaps in his hedge, one on each side of the toll bar, and driving by it instead of along that part of the highway which forms its

(*a*) Philpott *v.* St. George's Hospital, 6 HL. 338; Dent *v.* Allcroft, 31 LJ. Ch. 211.

(*b*) See *per* Lord Selborne in Macbeth *v.* Ashley, LR. 2 Sc. App. 359.

(*c*) Cross *v.* Watts, 32 LJ. CP. 73; 13 CB. NS. 239.

(*d*) R. *v.* Schofield, LR. 3 QB. 8.

chord (*a*). An enactment which imposes a duty on legacies would not extend to a gift to take effect on the donor's death, made by a deed which contained a power of revoking the gift; though such a gift has all the essential incidents of a legacy (*b*). A statute which imposes a tax, indeed, is always construed strictly; but this decision shows that if the law closes only one of two doors, it is no evasion of it to use the other which it has left open.

A warrant of attorney which authorized the issue of a writ of sequestration on a rectory as often as an annuity granted by the incumbent was in arrear, would be invalid; being a charging of a benefice to pay the annuity, contrary to the Act of the 13 Eliz. c. 20 (*c*). But where the warrant of attorney purported to be merely to secure the payment of an annuity mentioned in a bond which had been given for its payment, the Court refused to set aside the judgment entered up on the warrant, as it was not a charging of the benefice; although it appeared, by affidavit, that the object of the parties was, that the judgment should enable the annuitant to obtain a sequestration of the grantor's living, if the annuity should fall into arrear (*d*). The Act which requires

(*a*) Harding *v.* Headington, LR. 9 QB. 157.

(*b*) Tompson *v.* Browne, 3 M. & K. 32.

(*c*) Flight *v.* Salter, 1 B. & Ad. 673; Saltmarshe *v.* Hewett, 1 A. & E. 812.

(*d*) Colebrook *v.* Layton, 5 B. & Ad. 578. Comp. Doe *v.* Carter, 8 TR. 300, and Jeffries *v.* Alexander, 8 HL. 594, *sup.* p. 95.

that all bills of sale of personal chattels shall be registered within twenty-one days from execution, on pain of being void against creditors, was held not to invalidate an arrangement by which a fresh bill of sale was to be given every twenty-one days, and none were to be registered until the debtor got into difficulties. Although such an arrangement was declared to be detrimental to the interests of the revenue, and calculated to defeat and delay creditors, and so contrary to the general policy of the Act, since it left the debtor apparently the owner of property which he had transferred; it was held not to be prohibited by its language; and the last bill of sale, which was duly registered, was held valid against creditors (*a*).

SECTION IV.—CONSTRUCTION TO PREVENT ABUSE OF POWERS.

On the same general principle, enactments which confer powers are so construed as to meet all attempts to abuse them, either by exercising them in cases not intended by the statute, or by refusing to exercise them when the occasion for their exercise arose. Though the act done was ostensibly in execution of the statutory power, and within its letter, it would nevertheless be held not to come within the power, if done otherwise than honestly, and in the spirit of the

(*a*) Smale *v.* Burr, LR. 8 CP. 64; Ramsden *v.* Lupton, LR. 9 QB. 17.

enactment. For instance, the power given by modern bankrupt Acts to a majority of creditors to make arrangements with their debtor, which are made by statute binding on the non-assenting minority, would not be validly exercised so as to have this binding effect, if the conduct of the majority were tainted with fraud; or even if, from motives of benevolence, the majority had agreed to a composition disproportioned to the assets (*a*). So the creditor who votes for a composition with his debtor under the 126th section of the Bankruptcy Act of 1869, is bound to vote *bonâ fide* for the benefit of the creditors; and if it appears that he gave his vote for the benefit of the debtor, and not for that of the creditors, it would be rejected (*b*).

Where, as in a multitude of Acts, something is left to be done according to the discretion of justices or other authorities on whom the power of doing it is conferred, the discretion must be exercised honestly and in the spirit of the Act, otherwise the act done would not fall within the statute. "According to his "discretion," means, it is said, according to the rules of reason and justice, not private opinion (*c*); according to law and not humour; it is to be, not arbitrary, vague and fanciful, but legal and regular (*d*). And it

(*a*) Exp. Cowen, LR. 2 Ch. 563; see *per* Lord Cairns, 570.

(*b*) Exp. Cobb, LR. 8 Ch. 727.

(*c*) Rooke's Case, 5 Rep. 100a; Keighley's Case, 10 Rep. 140a; Lee *v.* Bude R. Co., LR. 6 CP. 576, *per* Willes, J.

(*d*) *Per* Lord Mansfield in R. *v.* Wilkes, 4 Burr. 2839.

must be exercised within the limits to which an honest man competent to the discharge of his office ought to confine himself (*a*); that is, within the limits and for the objects intended by the legislature. It was long ago settled that the power given by the 43 Eliz. to the overseers of parishes to raise a poor rate by taxation of the parishioners in such competent sums as they thought fit, did not authorise an arbitrary rate on each parishioner, but required that the rates should be equal and proportionate to the means of the contributors (*b*). Justices empowered, "if they "thought fit," to issue a distress warrant to enforce the payment of a rate, would not be entitled to refuse it merely because they considered that the Act under which it was imposed was unjust in principle; for this was obviously a question which the legislature, in passing the Act, did not intend to leave to their consideration, in exercising the discretionary power given to them (*c*). So, the Highway Act, 5 & 6 Will. 4, c. 50, which provided that if any complaint was made against the road surveyor's accounts, the justices at special highway sessions should hear it, and "make such "order thereon as to them should seem meet," would not authorise them to allow illegal expenses, (such as a charge for the use of the surveyor's horses, contrary to

(*a*) *Per* Lord Kenyon in Wilson *v.* Rastall, 4 TR. 757.

(*b*) Early's Case, Bulstr. 354; Marshall *v.* Pitman, 9 Bing. 601. See Jones *v.* Mersey Docks, 35 LJ. MC. 1; 11 HL. 443.

(*c*) R. *v.* Boteler, 33 LJ. MC. 101.

section 46), which are expressly forbidden to be incurred at all (*a*). So, overseers, who are required by the 3 & 4 Vict. c. 61, to certify whether applicants for beer licences are real residents and ratepayers of the parish, are not entitled to refuse the certificate on the ground that in their opinion there are already too many public-houses, or that the beer-shop is not required. They have no right to shut their eyes to the facts, and to refuse to certify, when they are satisfied that the applicant possesses the qualifications required by the Act (*b*).

Where the discretion has been settled by practice, this should not be departed from without strong reason (*c*). But if a statute confers a power, with the intention that its exercise shall be subject to the discretion, in every particular case, an exercise of it in the fetters of self-imposed rules, purporting to bind in all cases, would not be within the Act. Thus, where an Act gave the Court of Quarter Sessions, in every poor law appeal, power, if it thought fit, to give costs, it would be bound to exercise a fair and honest discretion in each case, and would not be entitled to govern itself by a general resolution, or rule of practice, to give nominal costs in all cases (*d*); for this would be in

(*a*) Barton *v.* Pigott, 44 LJ. MC. 5.

(*b*) R. *v.* Withyam, 2 Com. Law Rep. 1657; R. *v.* Kensington, 12 QB. 654.

(*c*) 2 Inst. 298. See R. *v.* Chapman, 8 C. & P. 558.

(*d*) R. *v.* Merioneth, 6 QB. 163; R. *v.* Glamorganshire, 1 L. M. & P. 336.

effect to repeal the provision of the Act. So, a licensing Act, which empowered justices to grant licences to innkeepers and others, to sell liquors, as in the exercise of their discretion they deemed proper, would not justify a general resolution on their part to refuse licences to all persons who did not consent to take out an excise licence for the sale of spirits, in addition to the licence for the sale of beer (*a*).

So, where a similar Act, after fixing the hours within which intoxicating liquors might be sold, authorised the licensing justices to alter the hours in any particular locality, within the district, requiring other hours; it was held that they had no right to alter the time in every case by virtue of a general resolution to which they had come (*b*). And though their resolution was limited to a portion of the locality, yet as this portion comprised every licensed house of the whole district, the limitation was regarded as a mere attempt to evade the Act. The statute required them to decide, in the honest and *bonâ fide* exercise of their judgment, what particular localities required other hours for opening and closing, than those specified; and they were bound to satisfy themselves that the special circumstances of the particular locality, which they took out of the general rule laid down by Parliament, required

(*a*) R. *v.* Sylvester, 31 LJ. MC. 93; R. *v.* Walsall, 3 Com. L.R. 100.

(*b*) Macbeth *v.* Ashley, LR. 2 Sc. App. 352.

that the exception should be made (*a*). The statute had laid down a general rule, and permitted an exception; but here the exception had swallowed up the rule; and that which might fairly have been an exercise of discretion, became no exercise of the kind of discretion meant by the Act (*b*).

(*a*) See the judgment of Lord Selborne, Id. 359.

(*b*) *Per* Lord Cairns, LR. 2 Sc. App. 357.

CHAPTER V.

SECTION I.—PRESUMPTIONS AGAINST OUSTING ESTABLISHED, AND CREATING NEW JURISDICTIONS.

It is, perhaps, on the general presumption against disturbing the established state of the law, that the strong leaning rests against construing a statute as ousting or restricting the jurisdiction of the Superior Courts. It is supposed that the legislature would not make so important an innovation, without a very explicit expression of its intention. It would not be inferred, for instance, from the grant of a jurisdiction to a new tribunal over certain cases, that the legislature intended to deprive the Superior Court of the jurisdiction which it already possessed over the same cases. Thus, an Act which provided that if any question arose upon taking a distress, it should be determined by a commissioner of taxes, would not thereby take away the jurisdiction of the Superior Court to try an action for an illegal distress (*a*). Nor would the Court of Chancery be ousted of its preventive

(*a*) Shaftesbury *v.* Russell, 1 B. & C. 666; see also Rochdale Canal Co. *v.* King, 14 QB. 122.

jurisdiction to stop by injunction the misapplication of poor rates, by the power given to the poor-law commissioners by statute to determine the propriety of all such expenditure (*a*). It did not follow in either case, that because authority was given to the commissioners it was taken away from the Court. And Acts which give justices and other inferior tribunals jurisdiction in certain cases, not only are understood, in general, when silent on the subject, as not affecting the power of control and supervision which the Superior Courts exercise over the proceedings of such tribunals; but they are even strictly construed when their language is doubtful. Thus, enactments to the effect that "no "Court shall intermeddle" in the cases (*b*), or that the case shall be "heard and finally determined" below (*c*), would not be construed as prohibiting such interference; and enactments which expressly provide that such proceedings shall not be removed by certiorari to the Superior Court, are held inapplicable when the lower tribunal has overstepped the limits of its jurisdiction in making the order (*d*); for the prohibition obviously applies only to cases which have been entrusted to the lower jurisdiction; or where the party who obtained the order, obtained it by fraud (*e*).

(*a*) Atty.-Genl. *v.* Southampton, 17 Sim. 6.

(*b*) R. *v.* Moseley, 2 Burr, 1011.

(*c*) R. *v.* Plowright, 2 Mod. 95; 2 Hawk. P. C. c. 27, s. 23.

(*d*) R. *v.* Derbyshire, 2 Ken. 299; R. *v.* Somersetshire, 2 B. & C. 816; R. *v.* St. Albans, 22 LJ. MC. 142; Penny *v.* S. E. R. Co., 7 E. & B. 660, 26 LJ. QB. 225.

(*e*) R. *v.* Cambridge, 4 A. &

The saying has been attributed to Lord Mansfield that nothing but express words can take away the jurisdiction of the Superior Courts (*a*); but it may certainly be taken away also by implication (*b*). Thus, a provision that any dispute between a society and any of its members "shall" be referred to arbitration, ousts the jurisdiction of the Courts over such disputes (*c*). Independently of the natural force of the imperative "shall," it is obvious that the provision, from its nature, would be superfluous and useless, if it did not receive a construction which made it compulsory, and not optional, to proceed by arbitration.

Where an Act vested in the trustees of a loan society all the money and effects, and the right of bringing and defending actions touching the property and rights of the society, and, after enabling them to lend money under certain circumstances, and to take notes for such loans in the name of their treasurer for the time being, to secure repayment, authorised a justice, at the suit of the treasurer, to enforce payment by distress; it was held that the treasurer was limited to that remedy (*d*). He had no rights but such as the Statute gave him, and therefore could not sue except

E. 121, *per* Lord Denman; R. *v.* Gillyard, 12 QB. 527; Colonial Bank *v.* Willan, LR. 5 PC. 417.

(*a*) R. *v.* Abbot, Doug. 553.

(*b*) *Per* Ashurst J., in Cates *v.* Knight, 3 TR. 442, and Shipman *v.* Henbest, 4 TR. 116.

(*c*) Crisp *v.* Bunbury, 8 Bing. 394; and see Marshall *v.* Nichols, 18 QB. 882, 21 LJ. QB. 343.

(*d*) See also Dundalk R. Co. *v.* Tapster, 1 QB. 667.

in the manner directed (*a*). But it was also held that the trustees might sue on such notes in the Superior Courts (*b*). Where an Act imposed penalties and took away the certiorari; and a subsequent one, after increasing the penalties and extending the restrictions of the first, provided that all "the powers, provisions, ex-" emptions, matters and things" contained in the earlier should, except as they were varied, be as effectual for carrying out the later Act as if re-enacted in it; it was held that the clause which took away the certiorari was incorporated in the new Act, and consequently that the jurisdiction of the Superior Courts was ousted (*c*).

So, where an Act created penalties of 50*l.* and 10*l.*; and, after enacting that the former should be recovered in the Superior Courts, authorised justices to impose the latter with powers of mitigation; it was held that the Superior Courts had no jurisdiction in respect of the lower penalty (*d*). Where it was enacted, by the Metropolis Management Act, that the owners of the houses which formed a street should pay the vestry the estimated cost of paving it, and that the amount should, in case of dispute, be ascertained by, and recovered before justices; it was held that the pecuniary obligation and the mode of enforcing it were so indissolubly united, that no

(*a*) Timms *v.* Williams, 3 QB. 413.

(*b*) Albon *v.* Pyke, 4 M. & Gr. 421.

(*c*) R. *v.* Fell, 1 B. & Ad. 380.

(*d*) Cates *v.* Knight, 3 TR. 442.

action lay against a householder for his contribution. Not only was the tribunal provided by the Act, better adapted, than a jury, to do complete justice in cases of dispute, but, in directing that the proceedings should be before justices, the statute was to be understood as impliedly limiting the time for taking them, to six months (*a*), instead of six years (*b*).

Where, indeed, a new offence or cause of action is created by Statute, and a special jurisdiction out of the course of the common law is prescribed, it must be followed. In such a case, there is no ouster of the jurisdiction of the ordinary courts, for they never had any. Thus, the Nuisances Removal Act, 11 & 12 Vict. c. 123, which enacts that if the owner of the offensive premises does not remove the nuisance, the guardians may do so, and that the costs and expenses incurred by them shall be deemed money paid for the use of the owner, and may be recovered as such by them in the County Court, or before two justices, was held to give exclusive jurisdiction to those tribunals (*c*), even where title to land was in question (*d*). But where the Act directs that the new offence shall be tried by an inferior Court according to the course of the common law, the inferior Court tries it as a common law

(*a*) 11 & 12 Vict. c. 43, s. 11.

(*b*) St. Pancras *v.* Batterbury, 2 CB. N.S. 477, 26 LJ. CP. 243. See also Blackburn *v.* Parkinson, 28 LJ. MC. 7.

(*c*) Hertford Union *v.* Kimpton, 25 LJ. MC. 41.

(*d*) R. *v.* Harden, 22 LJ. QB. 299, 2 E. & B. 288.

Court, subject to all the consequences of common law proceedings, and subject therefore to removal by writs of error, habeas corpus and certiorari; and the Superior Court would not be ousted of this jurisdiction (*a*).

As it is unreasonable to suppose that the Legislature would effect a measure of so much importance as the ouster or restriction of the jurisdiction of the Superior Courts, without giving a formal and explicit expression of its intention, so it is equally improbable that it would create a new jurisdiction with less explicitness; and therefore a construction which would impliedly have this effect is to be avoided; especially when it would have the effect of depriving the subject of his freehold, or of any common law right, such as the right of trial by jury, or of creating an arbitrary procedure (*b*). The words conferring such a jurisdiction must be clear and unambiguous (*c*); for, it is said, an inferior Court is not to be construed into a jurisdiction (*d*). But effect must of course be given to the intention, where the Act, without conferring jurisdiction in express terms, does so by plain and necessary implication. Thus, an Act which, without expressly empowering any tribunal to

(*a*) *Per* Lord Mansfield, in Hartley *v.* Hooker, Cowp. 524.

(*b*) Warwick *v.* White, Bunb. 106; Kite and Lane's Case, 107, *per* Lord Tenterden; R. *v.* Baines, 2 Lord Raym. 1269, cited by Lord Denman in Fletcher *v.* Calthrop, 6 QB. 891; Looker *v.* Halcomb, 4 Bing. 188.

(*c*) *Per* Keating J. in James *v.* S. E. R. Co., LR. 7 Ex. 296.

(*d*) *Per* Fortescue J. in Pierce *v.* Hopper, 1 Stra. 260.

try the offence, imposed penalties on any person who exposed diseased animals for sale, unless he showed "to the justices before whom he is charged," that he was ignorant of the condition of the animals, and gave him an appeal if he felt aggrieved "by the adjudica-"tion of justices," was construed as plainly giving justices jurisdiction over the offence (*a*).

A recent enactment has been considered as granting jurisdiction by implication, in a remarkable manner. The 31 & 32 Vict. c. 71, after reciting that it was desirable that some County Courts should have "Admiralty jurisdiction," and authorising the Queen in council to confer such jurisdiction on any of those Courts, empowered them to try certain classes of cases over which the Court of Admiralty had jurisdiction; directing the judge to transfer any case to the Admiralty, where the amount claimed exceeded 300*l.*, and giving also to the latter Court, in all cases, not only an appeal, but power to transfer to itself any suit instituted in the lower Court. By a supplementary Act passed in the following session (32 & 33 Vict. c. 51), the County Courts on which Admiralty jurisdiction had been thus conferred, were further authorised to try any claim arising out of any agreement made in relation to the use or hire of a ship, or in relation to the carriage of goods in a ship, where the claim does not exceed 300*l.* The Court of Admiralty having no jurisdiction over these cases before the Act

(*a*) Cullen *v.* Trimble, LR. 7 QB. 416.

was passed, it would follow that in thus giving the County Court this jurisdiction, the Statute also gave, by mere implication, to the Admiralty Court, not only appellate, but original jurisdiction also; besides introducing the anomaly of dealing with small cases on different principles of law from large ones; while the apparent object of the enactments was merely to distribute the existing Admiralty jurisdiction (*a*).

SECTION II.—THE CROWN NOT AFFECTED IF NOT NAMED.

On probably similar ground rests the rule commonly stated in the form that the Crown is not bound by a Statute unless named in it. It has been said that the law is *primâ facie* presumed to be made for subjects only (*b*); at all events, the Crown is not reached except by express words, or by necessary implication, in any case where it would be ousted of an existing prerogative (*c*). It is presumed that the Legislature does not intend to deprive the Crown of any prerogative, right or property, unless it expresses its intention to do so in explicit terms, or makes the

(*a*) See on this subject Everard *v.* Kendall, LR. 5 CP. 428; Simpson *v.* Blues, LR. 7 CP. 290; Gaudet *v.* Brown, LR. 5 PC. 134, and the cases there cited. See also Smith *v.* Brown, LR. 6 QB. 729.

(*b*) Willion *v.* Berkley, Plowd. 236.

(*c*) Inst. 191, Atty.-Genl. *v.* Allgood; Parker, 3 Bac. Ab. Prerogative, E. 5 (*c*); Co. Litt. 43*b*.; Chit. Prerogative, 382; Ayscough's Case, Cro. Car. 526; R. *v.* Wright, A. & E. 437.

inference irresistible. Thus, the compulsory clauses of Acts of Parliament, which authorise the taking of lands for railway or other purposes, such as are contained in the Lands Clauses Act of 1845, would not apply to Crown property, unless made so applicable in express terms or by necessary inference (*a*). Again, as it is a prerogative of the Crown not to pay tolls or rates, or other burdens in respect of property, it was long since established that the Poor Act of the 43 Eliz., which authorises the imposition of a poor-rate on every "inhabitant and occupier" of property in the parish, did not apply to the Crown, or to its direct and immediate servants, whose occupation is for the purposes of the Crown, and so is, in fact, the occupation of the Crown itself (*b*). Thus, property occupied by the servants of the State for public purposes, as the Post Office (*c*), the Horse Guards (*d*), the Admiralty (*e*), and even by local police (*f*), by the judges, as lodgings at the assizes (*g*), by a county court (*h*), or for a jail (*i*), or

(*a*) *Re* Cuckfield Board, 19 Beav. 153, 24 LJ. Ch. 585.

(*b*) *Per* Lord Westbury and Lord Cranworth in Mersey Docks Co. *v.* Cameron, 11 HL. 443, 35 LJ. MC. 22, 25; Amherst *v.* Somers, 2 TR. 372; R. *v.* St. Martin's, LR. 2 QB. 493.

(*c*) Smith *v.* Birmingham, 7 E. & B. 483.

(*d*) Amherst *v.* Somers, 2 TR. 272.

(*e*) R. *v.* Stewart, 8 E. & B. 360.

(*f*) Lancashire *v.* Shelford, E. B. & E. 230.

(*g*) Hodgson *v.* Carlisle, 8 E. & B. 230.

(*h*) R. *v.* Manchester, 3 E. & B. 336.

(*i*) R. *v.* Shepherd, 1 QB. 170. See the judgment of Blackburn J. in Mersey Docks Co. *v.* Cameron, 11 HL. 443, 35

by the commissioners of public works and buildings in respect of a toll-bridge of which they were in occupation as servants of the Crown (*a*), was held exempt from poor-rate. And property in the occupation of the Sovereign would, also, not be liable to the common law burden of church rates; one reason assigned being that they could not be enforced (*b*). So, the Royal Dockyards at Deptford were held not assessable to the land tax (*c*). But if the tax attached to the land, and not to its owner or occupier, this rule would not be applicable; and land charged with it in the hands of a subject, would not become exempted on vesting in the Sovereign (*d*).

On the same general principle, the numerous Acts of Parliament which have, at various times, taken away the writ of certiorari, have always been held not to apply to the Crown (*e*). So, the 13 Geo. 2, c. 18, s. 5, which limits the time for issuing that writ to six months from the date of the conviction (*f*), and the 12 & 13 Vict. c. 45, s. 5, which authorises the Quarter Sessions to give costs to the successful party

LJ. MC. 10. Leith Comm. *v.* Poor Inspectors, LR. 1 Sc. Ap. 17.

(*a*) R. *v.* McCann, LR. 3 QB. 677.

(*b*) *Per* Dr. Lushington in Smith *v.* Keats, 4 Hagg. 279.

(*c*) Atty.-Genl. *v.* Hill, 2 M. & W. 160.

(*d*) Colchester *v.* Kewney, LR. 1 Ex. 368.

(*e*) See ex. gr. R. *v.* Cumberland, 3 B. & P. 354; R. *v.* Allen, 15 East, 333.

(*f*) R. *v.* Farewell, 2 Stra. 1209; R. *v.* James, 1 East, 303*n*.

in any appeal (*a*), do not apply to the Crown, (the prosecutor), but only to the defendant. On the same ground, it would seem, the 4 Anne, c. 16, s. 4, which authorised a "defendant or tenant," with the leave of the Court, to plead several matters, was held not to extend to defendants in suits by or on behalf of the Crown (*b*); nor was the right of the Crown to remove into the Exchequer a cause in any other court touching the revenue of the Crown, affected by the County Court Act (*c*). So, the provision of the Statute of Frauds which made writs of execution binding on the goods of the judgment debtor only from the time of the delivery of the writ to the sheriff for execution, was held not to affect the earlier rule of law, (which bound the goods from the teste of the writ,) where an extent was issued at the suit of the Crown (*d*). The Statute of Amendments of 4 Ed. 3, st. 1, c. 6, which provided that clerical errors in records should be amended at once, without giving advantage to "the party" who had challenged the misprision, did not include the Crown; for, it was said, it had never been named "a party" in any Act of Parliament (*e*).

(*a*) R. *v.* Beadle, 26 LJ. MC. 111, 7 E. & B. 492.

(*b*) Atty.-Genl. *v.* Allgood, Parker, 1; Atty.-Genl. *v.* Donaldson, 7 M. & W. 422, 10 M. & W. 117; R. *v.* Abp. of York, Willes, 533; Hall *v.* Maule, 4 A. & E. 283.

(*c*) Mountjoy *v.* Wood, 1 H. & N. 58.

(*d*) R. *v.* Wynn, Bunb. 39; R. *v.* Mann, 2 Stra. 754; Barden *v.* Kennedy, 3 Atk. 739; Giles *v.* Grover, 1 Cl. & F. 74; Uppom *v.* Sumner, 2 W. Bl. 1251.

(*e*) R. *v.* Tuchin, 2 Lord

The Crown, however, is sufficiently named in a statute, within the meaning of the maxim, when an intention to include it is manifest. For instance, the 20 & 21 Vict. c. 43, which entitles (by section 2), either party, after the hearing, by a justice, of "any "information or complaint" which he has power to determine, to apply for a case for the opinion of one of the Superior Courts; and after authorising (by section 4) the justice to refuse the application, if he deems it frivolous, provides that it shall never be refused when made by, or under the direction of the Attorney-General, and directs (by section 6) the Superior Court, not only to deal with the decision appealed against, but to make such order as to costs as it deemed fit, was held by the Queen's Bench to include the Crown, and to authorise an order against it for the payment of costs. The language of the second section was wide enough to include the Crown; and as the fourth referred to the Crown as plainly as if it had spoken expressly of Crown cases, the language of the sixth authorising costs was construed as applying to such cases also, as well as to cases between subject and subject (*a*).

But where the Crown is not expressly named, the inference that the statute was intended to include it, must not be doubtful. For instance, where a local

Raym. 1066. See also Tobin *v.* R., 14 CB. NS. 505, and Thomas *v.* R., LR. 10 QB. 44.

(*a*) Moore *v.* Smith, 28 LJ. MC. 126.

Act imposed wharfage dues, for the repair and maintenance of a harbour, on certain articles, including stones; and without expressly binding the Crown to make such payments, exempted it from liability in respect of coals imported for the use of the royal packets, and from a toll over a bridge; the Court refused to infer from these exemptions, an intention to charge the Crown in respect of any other goods (*a*).

It is said that this rule does not apply when the Act is made for the public good, the advancement of religion and justice, the prevention of fraud, or the suppression of injury and wrong (*b*); "for religion, "justice, and truth are the sure supporters of the "crowns and diadems of kings" (*c*). What enactments fall within any of these categories, it would not be easy to state in terms sufficiently precise for practical guidance. The Statutes of Limitations may certainly be considered as for the public good, and even for the advancement of justice (*d*); yet they have always been held not to bind the Crown, except when named (*e*). But the Statute de donis (*f*); the Statute of Merton, against usury running against minors (*g*);

(*a*) Weymouth *v.* Nugent, 6 B. & S. 22, 34 LJ. MC. 81.

(*b*) Case of Ecclesiastical persons, 5 Rep. 14*a*, Magdalen College Case, 11 Rep. 70*b*–73*a*; R. *v.* Abp. of Armagh, Stra. 516; Bac. Abr. Prerogative, E. 5.

(*c*) 5 Rep. 14*b*.

(*d*) See Roddam *v.* Morley, 1 De G. & J. 1.

(*e*) 11 Rep. 68*b*. and 74*b*.; Lambert *v.* Taylor, 4 B. & C. 138, 6th point.

(*f*) Willion *v.* Berkley, Plowd. 223.

(*g*) Co. Litt. 120*a*, note 3.

the 31 Eliz., against simony (*a*); the 13 Eliz., c. 10, respecting ecclesiastical leases (*b*), were held to apply to the Crown, though not named in them (*c*).

Where neither its prerogative, rights nor property were in question, it would seem that the Crown would not be considered as excluded from the operation of a statute. Thus, the 11 Geo. 4, & 1 Will. 4, c. 70, which was passed for the better administration of justice, and enacted that writs of error upon judgments given in any of the Superior Courts, should be returned to the Exchequer Chamber, was held to apply to a judgment on an indictment (*d*), and on a petition of right (*e*); although the Crown was not named or referred to in the Act. No prerogative was affected by this construction (*f*). Besides, this Act would be classed as one for the advancement of justice, and therefore binding on the Crown, though not naming it.

(*a*) Co. Litt. 120*a*, note 3.

(*b*) 5 Rep. 14*a*, 11 Rep. 66*b*, Stra. 516.

(*c*) See Bac. Ab. Prerog. E. 5.

(*d*) R. *v.* Wright, I A. & E. 434.

(*e*) De Bode *v.* R. 13 QB. 464.

(*f*) *Per* Cur. Id. 379.

CHAPTER VI.

SECTION I.—PRESUMPTION AGAINST INTENDING AN EXCESS OF JURISDICTION.

ANOTHER general presumption is that the Legislature does not intend to exceed its jurisdiction.

Primarily, the legislation of a country is territorial. The general maxim is, that extra territorium jus dicenti impune non paretur; or, that leges extra territorium non obligant (*a*). It is true, this does not comprise the whole of the legitimate jurisdiction of a State; for it has a right to impose its legislation on its subjects in every part of the world; but in the absence of an intention clearly expressed or necessarily to be inferred from the language, or from the object or subject matter of the enactment, the presumption would be that Parliament did not design its Statutes to operate on them, beyond the territorial limits of the United Kingdom (*b*); and they are to be read as if words to that

(*a*) Dig. 2, 1, 20.

(*b*) Rose *v.* Hinely, 4 Cranch, 241, *per* Marshall C. J.; The Zollverein, Swab. 90, *per* Dr. Lushington; Cope *v.* Doherty, 4 K. & J. 357, 2 D. G. & J. 614, 27 LJ. MC. 660.

effect had been inserted in them (*a*). Thus, a woman who married in England, and afterwards married abroad during her husband's life, was not indictable under the statute of James I. against bigamy; for the offence was committed out of the kingdom, and the Act did not in express terms extend its prohibition to subjects abroad (*b*). The 5 & 6 Will. 4, c. 63, which prohibits the sale of liquids otherwise than by imperial measure, would not be considered as affecting a contract between British subjects for the sale of palm oil to be measured and delivered on the coast of Africa (*c*). A different construction would have involved the absurd supposition that the Legislature intended that English subjects should carry English measures abroad (*d*); besides setting aside, by a side-wind, the general principle that the validity of a contract is determined by the law of the place of its performance. Under that general principle, any statute which regulated the formalities and ceremonials of marriage, would, in general, be limited similarly in effect to the territorial jurisdiction of Parliament (*e*).

But a different intention may be readily collected from the nature of the enactment. The whole aim and object of the Royal Marriage Act (12 Geo. 3,

(*a*) *Per* Pollock C.B. in Rosseter *v.* Calhman, 8 Ex. 361; and *per* Cur. in The Amalia, 1 Moo. N. S. 471.

(*b*) 1 Hale, P.C. 662.

(*c*) Rosseter *v.* Calhman, 8 Ex. 361.

(*d*) *Per* Parke B. Id.

(*e*) Scrimshire *v.* Scrimshire, 2 Hagg. Cons. 371, Story, Confl. L. s. 121.

c. 11), for instance, (which was, according to the preamble, to guard against members of the royal family marrying without the consent of the sovereign, such marriages being of the highest importance to the State,) and which makes null and void the marriage of every descendant of George II. without the consent of the reigning sovereign, would have been defeated, if a marriage of such a descendant in some place out of the British dominions had not fallen within it. It was accordingly held that the statute imposed an incapacity, which attached to the person and followed him all over the world (*a*); though the marriage was valid according to the law of the country where it was celebrated (*b*). So, the 5 & 6 Will. 4, c. 54, which declared "all marriages between persons within the "prohibited degrees" null and void, was held to extend to all British subjects domiciled at home, though married in a country where such marriages are valid (*c*). Where an Englishman, after marrying an Englishwoman in England, became domiciled in America, it was held that he continued subject to the English Divorce Act (*d*).

This wider and more literal construction is not to be avoided even in a criminal statute, if it appears

(*a*) The Sussex Peerage, 11 Cl. & F. 85.

(*b*) Swift *v.* Swift, 3 Knapp, 257.

(*c*) Brook *v.* Brook, 27 LJ. Ch. 401; 9 H.L. 193.

(*d*) Deck *v.* Deck, 29 LJ. P. M. & A. 129; see Bond *v.* Bond, Id. 143.

clearly to have been intended. Thus, the 5 Geo. 4, c. 113, which made it felony for "any persons" to deal in slaves, or to transport them, or equip vessels for their transport, was held to apply to British subjects on the coast of Africa, the notorious scene of the crime which it was the object of the Act to suppress (*a*); if not in every other part of the world also (*b*); though it was not in express terms said to be applicable abroad.

SECTION II.—PRESUMPTION AGAINST A VIOLATION OF INTERNATIONAL LAW.

Under the same general presumption that the Legislature does not intend to exceed its jurisdiction, every statute is to be so interpreted and applied, as far as its language admits, as not to be inconsistent with the comity of nations, or with the established rules of international law (*c*). If, therefore, it designs to effectuate any such object, it must express its intention with irresistible clearness, to induce a Court to believe that it entertained it; for as long as any other possible construction remains, it would be adopted, in order to avoid imputing such an intention to the Legisla-

(*a*) R. *v.* Zulueta, 1 Car. & K. 215; Santos *v.* Illidge, 28 LJ. CP. 317; overruled on another point, 29 LJ. 348; 8 C.B. N.S. 861.

(*b*) See *per* Bramwell B. 29 LJ. CP. 352.

(*c*) *Per* Maule J. in Leroux *v.* Brown, 22 LJ. CP. 3; Bluntschli, Voelkerrecht, s. 847; *per* Dr. Lushington in The Zollverein, Swab. 98.

ture (*a*). All general terms must be narrowed in construction to avoid it (*b*).

For instance, it is an admitted principle of public law that, except as regards pirates jure gentium, and, perhaps, nomadic races and savages who have no political organisation (*c*), a nation has no jurisdiction over offences committed by a foreigner out of its territory; including in this expression its own ships, and the ships of its subjects on the high seas, and foreign ships on its waters; and the general language of any criminal statute would be so restricted in construction as not to violate this principle. Thus, the 9 Geo. 4, c. 31, s. 8, re-enacted by the 24 & 25 Vict. c. 100, s. 10, which enacted that when any person, feloniously injured abroad or at sea, died in England, or receiving the injury in England, died at sea or abroad, the offence should be dealt with in the county where the death or injury occurred, would not authorise the trial of a foreigner who inflicted a wound at sea in a foreign ship, of which the sufferer afterwards died in England (*d*). An Act of Parliament which authorised the commanders of our ships of war to seize and prosecute "all ships and vessels" engaged

(*a*) *Per* Cur. in U. S. *v.* Fisher, 2 Cranch, 390; Murray *v.* Charming Betsy, 2 Cranch, 118.

(*b*) *Per* Lord Stowell in Le Louis, 2 Dods. 229.

(*c*) See ex. gr. Ortolan, Dipl. de la Mer, i. 285.

(*d*) R. *v.* Lewis, Dears. & B. 182, 26 LJ. MC.; and see R. *v.* Depardo, 1 Taunt. 26; R. *v.* De Mattos, 7 C. & P. 458, Nga Hoong *v.* R., 7 Cox, 489; R. *v.* Bjornsen, 34 LJ. MC. 180.

in the slave trade, would be construed as not intended to affect any right or interest of foreigners contrary to the law of nations (*a*). Though speaking in just terms of indignation of the horrible traffic in human beings, it spoke only in the name of the British nation. Its prohibition of the trade as contrary to the principles of justice, humanity, and sound policy, applied only to British subjects; it did not render it unlawful as regarded foreigners (*b*). It was even held that a foreigner who was not prohibited by the law of his own country from carrying it on, was entitled to recover in an English Court damages for the seizure of a cargo of his slaves by a British man-of-war; our Courts being open to all aliens in amity with us, and the only question, therefore, being, whether the act of the man-of-war was wrongful, and what injury the plaintiff had sustained from it (*c*).

So, although a foreigner who contracts debts and commits an act of bankruptcy in England, would be liable to the English Bankrupt Laws, he would not fall within them if he committed the act of bankruptcy abroad (*d*). And an Act which gave salvage reward for saving lives has been held not to extend to the salvage of life on a foreign ship more than three marine miles from our shore (*e*).

(*a*) Le Louis, 2 Dods. 214; The Antelope, 10 Wheat. 66; see also R. *v.* Serva, 1 Den. 104.

(*b*) *Per* Best J. 3 B. & A. 358.

(*c*) Madrazo *v.* Willes, 3 B. & A. 353.

(*d*) Exp. Crispin, LR. 8 Ch. 374.

(*e*) The Johannes, Lush. 112, 30 LJ. P. M. & A. 91.

So, as it is a rule of all systems of law that real property is exclusively subject to the laws of the State within whose territory it lies, any Bankrupt Act which dealt in general terms with a bankrupt's real estate, would be construed as not extending to his lands abroad (*a*). This rule would apply equally to lands in our colonies, unless it were expressly shown that the Act was intended to reach them (*b*).

It is also a general principle that personal property has, except for some purposes, such as probate, no other *situs* than that of its owner; the right and disposition of it are governed by the law of the domicile of the owner, and not by the law of their local situation (*c*). The Bankrupt Acts, therefore, which effect an assignment of a bankrupt's personal property, would properly be construed as applying to such property everywhere (*d*). So, when an Act imposes a burden in respect of personal property, it would be construed, as far as its language permitted, as not intended to contravene the general principle. Thus the 36 Geo. 3, c. 52, which imposed a duty on

(*a*) Selkrig *v.* Davies, 2 Rose, 311, 2 Dow. 250; Cockerell *v.* Dickens, 3 Moo. P. C. 133. See also Sill *v.* Worswick, 1 H. Bl. 665; Phillips *v.* Hunter, Id. 402; Hunter *v.* Potts, 4 TR. 182; Story, Confl. L. ss. 428, 551, &c.

(*b*) See *Re* Hewitt's Estate, 6 W. R. 537; *Re* Scofield, 22 LT. 322; *Re* Groom, 11 LT. NS. 336.

(*c*) Story, Confl. L. s. 376.

(*d*) See the cases cited in note (*a*).

"every legacy given by any will of any person out of his "personal estate," and the Succession Duty Act, 16 & 17 Vict. c. 51, which imposes a duty on every "disposition "of property" by which "any person" becomes "en-"titled to any property on the death of another," would not apply where the deceased was a foreigner, or even a British subject domiciled abroad, though the property was in England (*a*). But they would affect personal property abroad, if the deceased was domiciled in England, though a foreigner (*b*). The Interpleader Act does not empower our Courts to bar the claim of a foreigner residing abroad (*c*).

It is hardly necessary to add, however, that if the language of an Act of Parliament unambiguously and without reasonably admitting of any other meaning, applies to foreigners abroad, or is otherwise in conflict with any principle of international law, the Courts must obey and administer it as it stands, whatever may be the responsibility incurred by the nation to foreign powers, in executing such a law (*d*); for the Courts can-

(*a*) In *re* Bruce, 2 Cr. & J. 436; Arnold *v.* Arnold, 2 M. & Cr. 256; Thomson *v.* The Adv.-Genl. 12 Cl. & F. 1; Wallace *v.* The Atty.-Genl. LR. 1 Ch. 1; Atty.-Genl. *v.* Campbell, LR. 5 HL. 524.

(*b*) Atty.-Genl. *v.* Napier, 6 Ex. 217.

(*c*) Patorni *v.* Campbell, 12 M. & W. 277.

(*d*) *Per* Cur. in The Marianna Flora, 11 Wheat. 40; The Zollverein, Swab. 96; The Johannes, Id. 188, 30 LJ. P. M. & A. 94; The Amalia, 32 LJ. P. M. & A. 193. As to the Hovering Acts (now the 16 & 17 Vict. s. 212), see Le Louis, 2 Dods. 245; Church *v.* Hubbard, 2 Cranch, 187.

not question the authority of Parliament, or assign any limits to its power (*a*).

Thus, the fourth section of the Statute of Frauds, which enacts that "no action shall be brought" in respect, among others, of contracts not to be performed within a year, unless they be in writing, was construed literally as regulating the procedure of our Courts, and therefore, as prohibiting a suit on a contract made in France, and in accordance with French law, but not in conformity with the formalities required by our law (*b*).

But this construction has sometimes been questioned, (*c*) ; and perhaps, having regard to the principle under consideration, the enactment might have been construed as having reference only to those contracts which it was within the province of Parliament to regulate.

SECTION III.—HOW FAR STATUTES CONFERRING RIGHTS AFFECT FOREIGNERS.

It may be added, in connection with this topic, that

(*a*) Comp. Bonham's Case, 8 Rep. 118*a* ; Day *v.* Savage, Hob. 87 ; London *v.* Wood, 12 Mod. 688.

(*b*) Leroux *v.* Brown, 22 LJ. CP. 1, 12 CB. 801.

(*c*) See Williams *v.* Wheeler 8 CB. NS. 299 ; Gibson *v.* Holland, LR. 1 CP. 8, *per* Willes J. ; and the notes to Birkmyr *v.* Darnell, and Mostyn *v.* Fabrigas, 1 Sm. L.C. See also Story, Confl. L. s. 285*n.* ; observing on Acebal *v.* Levy, 10 Bing. 376.

as regards the question how far statutes which confer rights, are to be construed as extending to foreigners abroad, the authorities are less clear. It has been said, indeed, that when personal rights are conferred, and persons filling any character of which foreigners are capable, are mentioned, foreigners would be comprehended in the statute (*a*). On the other hand, it has been laid down that, in general, statutes must be understood as applying to those only who owe obedience to the legislature which enacts them, and whose interests it is the duty of that legislature to protect; that is, its own subjects, including in that expression, not only natural born and naturalised subjects, but also all persons actually within its territorial jurisdiction; but that as regards aliens resident abroad, the legislature has no concern to protect their interests, any more than it has a legitimate power to control their rights (*b*). In this view, it would be presumed, in interpreting a statute, that the legislature did not intend to legislate either as to their rights or liabilities; and to warrant a different conclusion, the words of the statute ought to be express, or the context of it very clear (*c*). On this principle, mainly, it was held that the Act of

(*a*) *Per* Maule J. in Jeffreys *v.* Boosey, 4 HL. 895.

(*b*) See *per* Jervis C. J. in Jeffreys *v.* Boosey, 4 HL. 946; *per* Lord Cranworth, Id. 955; *per* Wood V. C. in Cope *v.* Doherty, 27 LJ. Ch. 601, 4 K. & J. 357; Comp. *per* Lord Westbury in Routledge *v.* Low, LR. 3 HL. 100.

(*c*) *Per* Turner L.J. in Cope *v.* Doherty, 27 LJ. Ch. 609, 2 De G. & J. 614.

Anne, which gave a copyright of fourteen years to "the author of any work," did not apply to a foreign author resident abroad (*a*). The decision would probably have been different if the author had been in England when his work was published (*b*). The later Act, 5 & 6 Vict. c. 45, which does not appear to differ materially, as regards this question, from that of Anne, was held to protect a foreign author who was in the British dominions at the time of publication (*c*). It has been held that a foreigner is entitled to maintenance, and to gain a settlement, under the poor laws (*d*). And it was lately decided in the Court of Admiralty that the 9 & 10 Vict. c. 93, which gives a right of action to the personal representative of a person killed by a wrongful and actionable act or neglect, extended to the representative of a foreigner who had been killed on the high seas, in a foreign ship, in a collision with an English vessel (*e*). But it is questioned whether that Court has any jurisdiction whatever under that Act (*f*).

On the other hand, it has been held that the 7 & 8 Vict. c. 101, which empowered the mother of a natural child

(*a*) Jeffreys *v.* Boosey, 4 HL. 815; dubitante Lord Cairns in Routledge *v.* Low, LR. 3 HL. 100.

(*b*) *Per* Lord Cranworth, Id. 955.

(*c*) Routledge *v.* Low, LR. 3 HL. 100.

(*d*) R. *v.* Eastbourne, 4 East, 103.

(*e*) The Gulfaxe, LR. 2 Ad. & Ec. 325; The Explorer, LR. 3 Ad. & Ec. 289.

(*f*) Smith *v.* Brown, LR. 6 QB. 729.

to sue its putative father for its maintenance, did not extend to a foreign woman who had become pregnant in England, but had given birth to the child abroad (*a*). The history, as well as the language of the enactment, showed that the liability arose from the birth of the child in this country (*b*). In the converse case of conception abroad and birth in England, the law would extend to the mother (*c*). The benefit of those enactments which, prior to the Merchant Shipping Act of 1862, limited the liability of shipowners for damage done, without their own fault, by their servants, to other ships, was held not to extend to foreign vessels; the object of the Legislature, in giving such a privilege, being to encourage the national shipping only, by removing the terrors of a liability commensurate with the damage done (*d*). But they were held to protect a British ship in a suit by a foreign ship, whether the collision took place in British waters (*e*) or on the high seas (*f*). In the latter case, the protecting enactment applied in express terms to foreign as well as British shipowners; and though it would probably have been read as if the words "within British jurisdiction" had been

(*a*) R. *v.* Blane, 13 QB. 769.

(*b*) *Per* Coleridge J., Id. 773.

(*c*) Hampton *v.* Rickards, 43 LJ. MC. 133.

(*d*) The Carl Johan, 1 Hagg. 113; Cope *v.* Doherty, 27 LJ. Ch. 600, 4 K. & J. 357; The Wild Ranger, 31 P. M. & A. 206, 1 J. & H. 180.

(*e*) The General Iron Screw Co. *v.* Schurmanns, 29 LJ. Ch. 877; 1 Jo. & H. 180.

(*f*) The Amalia, 32 LJ. P. M. & A. 197, 1 Moo. NS. 47.

inserted(*a*), if the Act had been considered as exceeding the legislative powers of Parliament to control the natural rights of foreigners., there was no such encroachment in giving it its full operation. For the nature and measure of legal remedies are governed by the lex fori; and it is no breach of international law, or any interference with the rights of foreigners, to determine what redress is to be given to suitors who resort to our Courts (*b*).

The provisions of the Admiralty Court Act of 1861, which give (by ss. 4 and 5) to the Court of Admiralty jurisdiction over any claims for the building of any ship, and also for necessaries supplied to any ship elsewhere than in the port to which she belongs, unless the owner be domiciled in England, were held to be confined to British ships; on the ground of the improbability that the British Parliament had intended to legislate for foreigners in foreign ports (*c*). But the seamen of a ship of any nation are entitled to sue for wages in the Admiralty Court, under the 10th section of the same Act, which gives that Court jurisdiction over any claim by a seaman of any ship for wages (*d*). In a recent case it was held that as the English sailing rules are not binding on foreign ships on the high seas, a

(*a*) See the Dumfries, Swab. 63.

(*b*) The Amalia, ubi sup.; Bank of U. S. *v.* Donnally, 8 Peters, 361.

(*c*) The India, 32 LJ. P. M. & A. 185.

(*d*) The Nina, LR. 2 PC. 38.

foreign ship was precluded, in a collision suit, from imputing to the British ship with which the collision occurred, a breach of any of those rules; on the ground that it had no right to benefit by rules by which it was not, itself, bound (*a*).

(*a*) The Zollverein, Swab. 96.

CHAPTER VII.

SECTION I.—REPUGNANCY.—REPEAL BY IMPLICATION.—ACTS IN THE NEGATIVE.

An author must be supposed to be consistent with himself; and, therefore, if in one place he has expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it expressly appears that he has changed it (*a*). In this respect, the work of the Legislature must be treated in the same manner as that of any other author; and the language of every part of a statute must be so construed, as far as possible, as to be consistent with every other part. The law, therefore, will not allow the revocation or alteration of a statute by construction of general words, when these may have their proper operation without it (*b*). But it is impossible to will contradictions; and if two passages are absolutely repugnant, the earlier stands impliedly repealed by the latter (*c*). Leges posteriores priores contrarias abrogant. Ubi duæ contrariæ leges sunt, semper

(*a*) Puff. L.N. b. 5, c. 12, s. 9. Bannister, 117.

(*b*) *Per* Bridgman C. J. in Wyn *v.* Lyn, Bridg. Rep. by

(*c*) Sup. p. 46.

antiquæ obrogat nova (*a*). To impute repugnancy, however, is to impute ignorance, or carelessness of expression, or confusion of thought; and not only, therefore, is repeal by implication not favoured (*b*), but any construction involving it is to be rejected in favour of any other which the language will rationally bear.

When the later of the two enactments is couched in terms which are negative in form or in effect, it is difficult to avoid the inference that the earlier one is impliedly repealed by it. For instance, if an Act exempts from licensing regulations the sale of a certain kind of beer, and a subsequent one enacts that "no "beer" shall be sold without a licence, it would obviously be impossible to save the former from the repeal implied in the latter (*c*).

But even negative Acts may admit of a construction not involving this effect. Thus, where an Act provided that the charges for distresses should not exceed those set forth in its schedule, and the schedule stated that in a distress for rent under 20*l.*, no more than 6*d.* in the pound should be paid for appraisement, "whether by one broker or more," it was held that the earlier law was not thereby repealed, which required that all appraisements should

(*a*) Livy, b. 9, c. 34.

(*b*) Foster's Case, 11 Rep. 63*a*.

(*c*) Read *v.* Story, 30 LJ. MC. 110, 6 H. & N. 423; remedied by 24 & 25 Vict., c. 21, s. 3.

be made by two brokers. The later Act might possibly have referred to the employment of a single appraiser by consent; and "loose words in a schedule" were not considered weighty enough to alter the previous state of the law (*a*).

It must also be borne in mind that two statutes expressed in negative terms may be affirmative inter se, though negative as regards a third, at which they are avowedly aimed. They may make two holes in the earlier Act, which can stand side by side without merging into one (*b*). For instance, the 12 Anne, st. 2, c. 16, having made void all loans at more than five per cent., the 3 & 4 Will. 4, c. 98, enacted that "no" bill or note payable at three months or less should be void for usury; and the 2 & 3 Vict. c. 37, that "no" bill or note payable at twelve months or less should be void on that ground, but with the additional provision that the Act was not to apply to loans on real security; and it was held that the last-mentioned Act did not repeal the 3 & 4 Will. 4. The negative words, in which both were expressed, had reference to the Act of Anne; but inter se, they were affirmative statutes, and the proviso of the later one, therefore, did not affect the short loans dealt with by the Act of William IV. (*c*). The 3 & 4 Will. 4, c. 27,

(*a*) Allen *v.* Flicker, 10 A. & E. 640.

(*b*) *Per* Maule J. in Clack *v.* Sainsbury, 2 L. M. & P. 627, 631.

(*c*) Clack *v.* Sainsbury, ubi sup.; Nixon *v.* Phillips, 7 Ex.

s. 42, which provided that no action for rent, or for interest on money charged on land should be brought after six years, and the 3 & 4 Will. 4, c. 42, passed three weeks later, which provided that no action for rent reserved by lease under seal, or for money secured by bond or other specialty, should be brought after twenty years, were construed as reconcileable, by holding that the later enactment was an exception out of the former. Thus, the effect of the conjoined enactments was that no more than six years' arrears of rent or interest were recoverable, except where they were secured by covenant or other specialty, in which case twenty years' arrears were recoverable (*a*).

SECTION II.—CONSISTENT AFFIRMATIVE ACTS.

When the later enactment is worded in affirmative terms only, without any negative expressed or implied, it does not take away the earlier law (*b*). The governing principle in all these cases is to construe the Acts, if possible, as reconcileable and capable of co-existence. Thus, an Act which authorised the Quarter Sessions to try a certain offence, would not be construed as wholly repealing an earlier one which

188, 21 LJ. Ex. 88; Exp. Warrington, 3 De G. M. & G. 159, 22 LJ. Bank. 33.

(*a*) Hunter *v.* Nockolds, 1 Mc. N. & Gord. 640, Paget *v.* Foley, 2 Bing. NC. 679, Sims *v.* Thomas, 12 A. & E. 535, Humfrey *v.* Gery, 7 CB. 567. Comp. Round *v.* Bell, 30 Beav. 121.

(*b*) Co. Litt. 115*a*, 2 Inst. 200.

enacted that the offence should be tried by the Queen's Bench or the Assizes, and not elsewhere, but would still leave the power to those Courts (*a*). An Act which imposes a liability on certain persons to repair a road, would not be construed as impliedly exonerating the parish from its common law duty to do so (*b*). And an Act (7 & 8 Vict. c. 15) which provides that if a person suffers bodily injury from the neglect of a mill-owner to fence dangerous machinery, after notice to do so from a factory inspector, the mill-owner shall be liable to a penalty of from 10*l.* to 100*l.*, recoverable by action by the Inspector, and applicable to the party injured or otherwise, as the Home Secretary should determine, would not affect the common law right of the injured party to sue for damages for the injury (*c*). A bond by a collector with one surety, good under the ordinary law, would not be deemed invalid, though the Act which required it enacted that the collector should give good security by a joint and several bond with two sureties at least (*d*).

The 30 & 31 Vict. c. 142, which authorises a judge of the Superior Court in which an action is brought, to send the case for trial to a County Court, was not construed as impliedly repealing the earlier enactment of 11 Geo. 4, c. 70, which authorises any judge of the Superior

(*a*) Co. Litt. 115*a*, Anon, Lofft, 465.

(*b*) R. *v.* St. George's, Hanover Square, 3 Camp. 222.

(*c*) Caswell *v.* Worth, 5 E. & B. 894. See Ambergate R. Co. *v.* Midland R. Co., 2 E. & B. 793.

(*d*) Peppin *v.* Cooper, 2 B. & A. 431.

Courts to transact the chamber business of the other Courts as well as of his own; but the later Act was read with the earlier, and the expression "Judge of the "Court in which the action was brought," was thus construed as equivalent to any judge of any of the Superior Courts of law (*a*). An Act which empowers justices to commit for a month an apprentice guilty of misconduct in his service, is not repealed by a later one which empowers them to compel an apprentice who absents himself to serve for as long as he was absent, or to make compensation for his absence (*b*).

The 23 Eliz. c. 1, which imposed a monthly penalty of twenty pounds to the Queen on recusants, was held not to repeal the earlier statute 1 Eliz. c. 2, which imposed a penalty of twelve pence to the poor for every Sunday's omission to go to church (*c*). In this case, indeed, a later Act, 3 Jac. 1, treated the first of Elizabeth as still in force. The 55 Geo. 3, c. 184, s. 52, which directs that all affidavits required by existing or future Acts for the verification of accounts should, unless when otherwise expressly provided, be made before the Commissioners of Stamps, was held unaffected by the 9 Geo. 4, c. 23, which empowered justices of the peace to administer the oath in similar cases. Although the later Act did "otherwise provide," it did not make the provision

(*a*) Owens *v.* Woosman, LR. 3 QB. 469.

(*b*) Gray *v.* Cookson, 16 East, 13.

(*c*) 11 Rep. 63*b*.

inconsistent with the earlier Act (*a*). The Highway Act, 5 & 6 Will. 4, c. 50, which enacts, by section 109, that no action for anything done under it, shall be begun until twenty-one days' notice of action has been given, nor after three months from the cause of action, was held not to repeal, as regards the notice of action, the 24 Geo. 2, c. 44, which gave justices the privilege of a month's notice when sued for anything done in the execution of their office; though it was at the same time held to repeal the provision of the same Act, which limited the time to six months (*b*).

General words, says Coke, do not take away a particular privilege, so that the Statute of Westminster 2, which gives a judgment creditor the writ of elegit to take half of the lands of his debtor, does not authorise the issue of such a writ against the heir of the debtor during his minority (*c*). The 28 Hen. 8, c. 11, which gave the curate who served during a vacancy, an action for his stipend against the next incumbent, remained unaffected by the 1 & 2 Vict. c. 106, which enacted that on the avoidance of a benefice, the stipend of the curate during the vacancy, fixed by the bishop, should be paid by the sequestrator; both Acts being in the affirmative, and not so inconsistent as to be incompatible with both standing (*d*); though the

(*a*) R. *v.* Greenland, LR. 1 CC. 65.

(*b*) Rix *v.* Borton, 12 A. & E. 470.

(*c*) 2 Inst. 395.

(*d*) Dakins *v.* Seaman, 9 M. & W. 777.

later Act afforded ground for contending that as a court of law could not determine what the salary should be, it was not competent to assist the curate in recovering any (*a*). Where one Bankruptcy Act empowered the Court to make the bankrupt an allowance, and a later one enacted that the creditors should determine whether any and what allowance should be made to him, it was held that the former power was still in force when the creditors did not exercise that given them by the later Act (*b*).

Where a power was given by a local Act to Commissioners to make drains through private lands, after giving twenty-eight days' public notice, with power to the persons interested to appeal; and the subsequently passed Nuisances Removal Act of 1855 gave the same power to the same Commissioners, without requiring notice, it was held that they were at liberty to act under either statute. The notice was not a right given to the parties interested, but a mere restriction; and there was no more inconsistency in the co-existence of the two powers, than in the co-existence of the ordinary covenants in a lease to repair simply, and to repair after a month's notice (*c*). Where an Act imposed a duty of thirty-five shillings on the transfer of a mortgage, and a

(*a*) *Per* Parke B., Id. 789.

(*b*) Exp. Ellerton, 33 LJ. Bank. 32.

(*c*) Derby *v.* Bury Commissioners, LR. 4 Ex. 222; comp. however, such cases as Cumberland *v.* Copeland, 1 H. & C. 194, inf. p. 145.

second provided that when the transfer was made by several deeds, only five shillings should be charged on all but the first, and a third repealed the first by imposing a stamp of sixpence per 100*l.*, it was held that the second Act was not repealed by the third (*a*).

The Thames Conservancy Act of 1857, which makes the owner of a vessel navigating the Thames responsible for damage done to the Conservators' property, by any of the boatmen "or other persons belonging "to or employed in" the vessel, was held not to affect the provision of the Merchant Shipping Act of 1854, which protects owners from liability, where the damage is occasioned by the fault of a compulsorily employed pilot, who, therefore, was not included in the words "other persons" (*b*). The 33 Geo. 3, c. 54, which protected members of friendly societies from removal until they became actually chargeable, was not impliedly repealed by the 35 Geo. 3, c. 101, which extended that protection to all poor persons; for though the latter seemed to supersede the former by making it unnecessary, it declared that an unmarried woman pregnant was to be deemed chargeable, in which respect it differed from the earlier Act, under which the pregnant daughter of a member of a friendly society was held not to be removable (*c*). The 17 Geo. 2, c. 38, s. 4, which empowered the Quarter Sessions,

(*a*) Foley *v.* Commissioners of Inland Revenue, 3 Ex. 263.

(*b*) Conservators of the Thames *v.* Hall, LR. 3 CP. 415.

(*c*) R. *v.* Idle, 2 B. & A. 149.

upon an appeal against a poor-rate, to order costs to be paid to the successful party, was held unrepealed by the 12 & 13 Vict. c. 45, s. 5, which, in substance, empowered the Quarter Sessions to direct the unsuccessful party to pay the costs of the successful party to the clerk of the peace, who was to pay them over to the successful party; so that the order for costs might be made in either form (*a*).

The Acts 43 Eliz. c. 6, 21 Jac. c. 16, and 22 Car. c. 9, having provided that a plaintiff in an action for slander, who recovered less than forty shillings damages, was to be entitled only to as much costs as the damages amounted to, the 3 & 4 Vict. c. 24 expressly repealed the first and third of those Acts, but did not mention the second; and it then enacted that a plaintiff who, in such cases, recovered less damage than forty shillings, should not be entitled to any costs, unless the presiding judge certified that the slander was malicious; and it was held that this later enactment did not impliedly repeal the 21 Jac. c. 16, and that the effect of the judge's certificate was merely to remit the plaintiff to the rights which that statute gave him (*b*). The 5 Vict. c. 27, which, after reciting that it would be advantageous

(*a*) R. *v.* Huntley, 3 E. & B. 172; Gay *v.* Matthews, 33 LJ. MC. 14, 4 B. & S. 425; Comp. R. *v.* Hellier, 21 LJ. MC. 3.

(*b*) Evans *v.* Rees, 9 CB. NS. 391, 30 LJ. CP. 16; see also Davies *v.* Griffiths, 4 M. & W. 377, and Wrightup *v.* Greenacre, 10 QB. 1.

to ecclesiastical benefices if incumbents were empowered to grant leases, with the consent and under the restrictions mentioned in the Act, gave them power to grant, with the consent of the patron or ordinary, leases not exceeding fourteen years in duration, reserving the best rent, payable quarterly, and containing numerous special covenants by the lessee, was held not to abridge the power which every parson and vicar had by the common law, as modified by the 13 Eliz. c. 10, to grant leases for twenty-one years, or three lives, the lease being confirmed by the patron or ordinary (*a*).

SECTION III.—INCONSISTENT AFFIRMATIVE ACTS.

But an affirmative enactment cannot always be construed so as to be consistent with the continuance of an earlier one; and it repeals by implication a precedent affirmative enactment, so far as it is contrary to it (*b*). In such a case, the affirmative terms import that negative which is fatal to the earlier enactment. Thus, if an Act says that a juror shall have twenty pounds a year, and a new statute enacts that he shall have twenty marks, the latter necessarily implies that the qualification required by the former Act shall not

(*a*) Green *v.* Jenkins, 29 LJ. Ch. 505, 1 De G. F. & J 454. See other illustrations in Lester's case, 16 East, 374, R. *v.* Pinney, 2 B. & C. 322; R. *v.* Medway Union, LR. 3 QB. 383.

(*b*) Bac. Ab. Statute, D. Foster's Case, 5 Rep. 59.

be necessary, and thus repeals that Act (*a*). The 5 & 6 Vict. c. 22, s. 16, which authorised the Secretary of State to remove to Bethlehem hospital any prisoner confined in the Queen's prison, who was of unsound mind, was held, as regards such prisoners, to repeal impliedly the earlier enactment of 1 & 2 Vict. c. 110, s. 102, which provided that a prisoner for debt of unsound mind should be discharged after certain inquiries and formalities (*b*). Where an Act of Charles II. enabled two justices of the peace, "whereof "one to be of the quorum," to remove any person likely to be chargeable to the parish in which he comes to inhabit, and another, after reciting this provision, repealed it, and enacted that no person should be removable until he became chargeable, in which case "two justices of the peace" were empowered to remove him; it was held that the later Act dispensed with the qualification of being of the quorum (*c*).

An enactment that the custos rotulorum shall nominate a fit person to be clerk of the peace quamdiu bene se gesserit, impliedly repealed an earlier one which authorised the appointment durante bene placito; for a grant under the former would be inconsistent with one under the latter of the above Acts (*d*). Where an Act

(*a*) Jenk. Cent. 2, 73, 1 Bl. Comm. 89.

(*b*) Gore *v.* Grey, 32 LJ. CP. 106, 13 CB. NS. 138.

(*c*) R. *v.* Llangian, 4 B. & S. 249, 32 LJ. MC. 225, dissentiente Cockburn C. J.

(*d*) Owen *v.* Saunders, 1 Lord Raym. 159.

made it actionable to sell a pirated copy of a work with knowledge that it was pirated, and a subsequent Act contained a similar provision, but without any mention of guilty knowledge, it was held that the earlier Act was so far abrogated that an action was maintainable for a sale made in ignorance of the piracy (*a*). Where an Act required that a consent should be given in writing attested by two witnesses, and a subsequent Act made the consent valid if in writing, but made no mention of witnesses, this silence was held to repeal by implication the provision which required them (*b*). The 1 Eliz. c. 1, which empowers the queen to authorise ecclesiastical persons to administer oaths to supposed offenders was impliedly repealed by the 16 Car. I., which took away the oaths (*c*). Where an Act exempted from impressment all seamen employed in the Greenland fisheries, and a later one exempted seamen embarked for those fisheries whose names were registered and who gave security, it was held that the earlier was repealed pro tanto by the later Act (*d*).

If the co-existence of two sets of provisions would be destructive of the object for which they were

(*a*) West *v.* Francis, 5 B. & A. 737; Gambart *v.* Sumner, 5 H. & N. 51, 29 LJ. Ex. 98.

(*b*) Cumberland *v.* Copeland, 1 H. & C. 194, 31 LJ. Ex. 354; *per* Jervis C. J. in Jeffreys *v.* Boosey, 4 HL. 943.

(*c*) Birch *v.* Lake, 1 Mod. 185.

(*d*) Exp. Carruthers, 9 East, 4.

passed, the earlier would be repealed by the later. Thus, when a local Act empowered one body to name the streets and to number the houses in a town, and another local Act gave the same power to another body, the earlier would be superseded by the later Act; for, to leave the power with both, would be to defeat the object of the Legislature (*a*). But if one local Act imposed a toll, payable to a turnpike trust, for passing along a road, and another transferred the duty of repairing the road to another body, prohibiting also the trustees from repairing it, the toll would not be thereby impliedly repealed (*b*). A later Act which conferred a new right, would repeal an earlier one, if the co-existence of the right which it gave, would be productive of inconvenience; for the just inference from such a result would be that the Legislature intended to take the earlier right away. Thus, the Joint Stock Banking Act of 7 Geo. 4, c. 46, which, besides limiting and varying the common law liabilities of members of banking companies, provided that suits against such companies "shall and lawfully may" be instituted against the public officer, was held to take away by implication the common law right of suing the individual members (*c*).

(*a*) Daw *v.* Metropolitan Board, 31 LJ. CP. 223, 12 CB. NS. 161. See Cortis *v.* Kent Waterworks, 7 B. & C. 314; Bates *v.* Winstanley, 4 M. & S. 429.

(*b*) Phipson *v.* Harvett, 1 C. M. & R. 473.

(*c*) Steward *v.* Greaves, 10 M. & W. 711; Chapman *v.* Mil-

In other circumstances, also, the inconvenience or incongruity of keeping two enactments in force has justified the conclusion that one impliedly repealed the other, for the Legislature is presumed not to intend such consequences. Thus, the 9 Geo. 4, c. 61, which prohibited keeping open public-houses during the hours of afternoon divine service, was held repealed by implication by the 18 & 19 Vict. c. 118, which prohibited the sale between three and five o'clock P.M., the usual hours of afternoon divine service. If both Acts had co-existed, it would have been in the power of the clergyman of every parish to close the public-houses for four hours instead of two, by beginning the afternoon service at one or at five P.M., an intention too singular to be lightly attributed to the Legislature (*a*).

An intention to repeal an Act may be gathered from its repugnancy to the general course of subsequent legislation. Thus, the 7 Geo. 1, c. 21, which prohibited bottomry loans by Englishmen to foreigners on foreign ships engaged in the India trade, was held to have been silently repealed by the subsequent enactments which put an end to the monopoly of the East India Company, and threw its trade open to foreign as well as to all British ships (*b*).

vain, 5 Ex. 61, 1 L. M. & P. 209; Davison *v.* Farmer, 6 Ex. 242; O'Flaherty *v.* McDowell, 6 HL. 142.

(*a*) Whiteley *v.* Heaton, 27 LJ. MC. 217, S.C. nom. R. *v.* Whiteley, 3 H. & N. 143.

(*b*) The India, Br. & Lush.

SECTION IV.—IMPLIED REPEAL IN PENAL ACTS.

THE question whether a new Act impliedly repeals an old one has frequently arisen in construing Acts which deal anew with already existing offences without expressly referring to the past legislation respecting them. The problem in all such cases is whether the manner in which the matter is dealt with in the later Act shows that the Legislature intended merely to make an amendment or addition to the existing law, or to treat the whole subject de novo, and so to make a tabula rasa of the pre-existing law. Of course, if the offences are not identical, the two Acts cannot come into conflict. Thus, the 55 Geo. 3, c. 137, which imposed a penalty of 100*l.* recoverable by the common informer by action, on any parish officer who, for his own profit, supplied goods for the use of a workhouse, or for the support of the poor, was held unaffected by the 4 & 5 W. 4, c. 76, s. 77, which inflicted a fine of 5*l.*, recoverable summarily, half for the informer and half for the poor rates, on any such officer who supplied goods for his profit to an individual pauper (*a*). It had been decided before the passing of the later Act (which, indeed, was passed in consequence of that decision), that the earlier enactment applied only to a

221, 33 LJ. P. M. & A. 193. See also R. *v.* Northleach, 5 B. & Ad. 978.

(*a*) Robinson *v.* Emerson, 4 H. & C. 352.

general supply for the poor generally, but not to the supply of an individual pauper (*a*).

It would seem that an Act which, without altering the nature of the offence, as by making it felony instead of misdemeanour, imposes a new kind of punishment, or provides a new course of procedure for that which was already an offence, is usually regarded as cumulative, and as not superseding the pre-existing law. For instance, though the 9 & 10 W. 3 visits the offence of blasphemy with personal incapacities and imprisonment, an offender might also be indicted for the common law offence (*b*). The 2 W. & M., which prohibited keeping swine in houses in London on pain of the forfeiture of the swine so kept, did not abolish the liability to fine and imprisonment on indictment at common law for the nuisance (*c*). So, the 3 & 4 W. & M. c. 11, in imposing a penalty of 5*l.*, recoverable summarily, on parish officers who refused to receive a pauper removed to their parish by an order of justices, was held to leave those officers still liable to indictment for the common law offence of disobeying the order, which the justices had authority to make under the 13 & 14 Car. 2. In such cases, it is presumed that the Legislature knew that the offence was punishable by indictment, and that as it did not in express terms abolish the common law proceeding,

(*a*) Proctor *v.* Manwaring, 3 B. & A. 145.

(*b*) R. *v.* Carlile, 3 B. & A. 161.

(*c*) R. *v.* Wigg, 2 Salk. 460.

it intended that the two remedies should co-exist (*a*). At all events, the change made by the new law was not of a character to justify the conclusion that there was any intention to abrogate the old; and in most of the examples cited, the presumption against an intention to oust the jurisdiction of the Superior Courts would strengthen it.

On the other hand, where a statute alters the quality and incidents of an offence, as by making that which was a felony merely a misdemeanour, it would be construed as impliedly repealing the old law. Thus, the 16 Geo. 3, c. 30, which imposed a pecuniary penalty merely, on persons who hunted or killed deer with their faces blacked, was held to have repealed the Black Act (9 Geo. 1, c. 22), which made that offence capital (*b*).

Again, where the punishment or penalty is altered in degree but not in kind, the later provision would be considered as superseding the earlier one (*c*). Thus, the 5 Geo. 1, c. 27, which imposed a fine of 100*l.* and three months' imprisonment for a first offence, and fine at discretion and twelve months' imprisonment for the second, was held to be impliedly repealed by the 23 Geo. 2, c. 13, which increased the punishment for the first offence to a fine of 500*l.* and twelve

(*a*) Stevens *v.* Watson, 1 Salk. 45; R. *v.* Robinson, 2 Burr. 800, *per* Lord Mansfield.

(*b*) R. *v.* Davis, 1 Leach, 271.

(*c*) See *per* Lord Abinger in Henderson *v.* Sherborne, 2 M. & W. 236, and Atty.-Genl. *v.* Lockwood, 9 M. & W. 391; and *per* Martin B. in Robinson *v.* Emerson, 4 H. & C. 355.

months' imprisonment, and for the second to 1000*l.* and two years' imprisonment (*a*). So, it was held in America that a statute which punished the rescue or harbour of a fugitive slave by a penalty of five hundred dollars, recoverable by the owner for his own benefit, and reserved his right of action for damages, was repealed by a later enactment which imposed for the same offences a penalty of a thousand dollars on conviction, and gave the party aggrieved a thousand dollars by way of damages recoverable by action (*b*).

Indeed, it has been laid down generally, that if a later statute again describes an offence created by a former statute, and affixes a different punishment to it, varying the procedure, giving, for instance, an appeal where there was no appeal before; directing something more or something different, something more comprehensive, the earlier statute is impliedly repealed by it (*c*). The 6 Geo. 3, c. 25, which made an artificer or workman who absented himself from his employment, in breach of his contract, liable to three months' imprisonment, was held to be impliedly repealed by the 4 Geo. 4, c. 34, which punished not only that offence, but also that of not entering on the service, after having contracted in writing to serve, with three

(*a*) R. *v.* Cator, 4 Burr. 2026.

(*b*) Norris *v.* Crocker, 13 Howard, 429.

(*c*) *Per* Cur. in Michell *v.* Brown, 28 LJ. MC. 55, 2 E. & E. 267. *Per* Bramwell B. in Exp. Baker, 26 LJ. MC. 164, 2 H. & N. 219.

months' imprisonment, *plus* a proportional abatement of wages for the time of such imprisonment, or in lieu thereof, with total or partial loss of his wages and discharge from service (*a*). So, the 11th section of the 54 Geo. 3, c. 159, which imposes a penalty of 10*l.* on any person throwing ballast or rubbish out of a vessel into a harbour or river so as to tend to the obstruction of the navigation, and gives an appeal, was held to repeal by implication the earlier Act, 19 Geo. 2, c. 22, which had imposed, without appeal, a penalty of not less than fifty shillings and not more than 5*l.* for the same offence (*b*). Where a local Act imposed on "all persons" engaged in making gas, who suffered impure matter to flow into any stream, a penalty of 200*l.*, recoverable by a common informer by action, and a further penalty of 20*l.* for every day the nuisance was continued, payable to the informer or to the party injured, as the justices thought fit; and the General Gasworks Clauses Act of 1847 afterwards imposed the same penalty on the "undertakers" of gasworks authorised by special Act, recoverable by the party injured; it was held that the earlier Act was repealed as regarded such undertakers (*c*).

But it has been observed by the Supreme Court of the United States, that in the interpretation of laws

(*a*) Youle *v.* Mappin, 30 LJ. MC. 234, S.C. nom. R. *v.* Youle, 6 H. & M. 753.

(*b*) Michell *v.* Brown, 2 E. & E. 257, 28 LJ. MC. 53.

(*c*) Parry *v.* Croydon Gas Co., 15 CB. NS. 568.

for the collection of revenue, whose provisions are often very complicated and numerous, to guard against frauds, it would be a strong proposition to assert that the main provisions of any such laws were repealed, merely because in subsequent laws other powers were given, and other modes of proceeding were provided, to ascertain whether any frauds had been attempted. The more natural inference is that such new laws are auxiliary to the old (*a*).

SECTION V.—NO REPEAL WHERE THE OBJECTS OF THE STATUTES ARE DIFFERENT.

It is obvious that where the objects of two apparently repugnant Acts are different, no repeal takes place. The language of each is confined to its own object. They run parallel lines, without meeting. Thus, the real property statute of limitations, 3 & 4 Will. 4, c. 27, which limits the time for suing for the recovery of land, which is defined to include tithes, to twenty years after the right accrued, does not affect the provision of the Act of the preceding session, 2 & 3 Will. 4, c. 100, which enacts that claims to exemption from tithes shall be valid after non-payment for thirty years; for the former Act deals with conflicting claims to the right of receiving tithes which are admittedly payable, while the latter relates to the liability to pay

(*a*) *Per* Cur. in U. S. *v.* Wood, 16 Peters, 363.

them (*a*). In the one case, tithe is real property, in the other a chattel (*b*).

So, an Act which imposes, for police purposes, a penalty for retailing excisable liquors without a magistrate's licence, would not be affected by an excise Act of later date, which, after imposing a duty on persons licensed by magistrates, provided that nothing which it contained should prohibit a person duly licensed to retail beer, from carrying on his business in a booth or tent, at a fair or race (*c*). The 1 Will. 4, c. 64, which imposes on beer retailers licensed by the Excise, a penalty of from 10*l.* to 20*l.*, on conviction before justices, for selling beer made otherwise than of malt and hops, or for mixing any drugs with it, or for diluting it, was held not to affect the 56 Geo. 3, c. 58, which punished with a penalty of 200*l.* any retailer of beer who had in his possession, or put into his beer, any colouring matter or preparation in lieu of malt and hops; partly because the objects of the two enactments were not identical, the later one having solely a sanitary object in view, and the protection of the consumer; while the earlier was aimed as much at the repression of frauds on the

(*a*) Ely (Dean of) *v.* Cash, 15 M. & W. 617.

(*b*) Ely (Dean of) *v.* Bliss, 2 De G. M. & G. 459. See also Hunt *v.* Gt. Northern R. Co., 10 CB. 900, 2 L. M. & P. 268 and 271. Comp. R. *v.* Everett, 1 E. & B. 273, 22 LJ. QB. 3; Re Knight, 1 Ex. 802.

(*c*) R. *v.* Harrison, 4 B. & A. 519. See Buckle *v.* Wrightson, 34 LJ. MC. 43, 5 B. & S. 854; and Ash *v.* Lynn, LR. 1 QB. 270.

revenue (*a*). It is to be observed, also, that the 56 Geo. 3, c. 58, was expressly kept alive by the 1 Will. 4, c. 51, passed a week before the 1 Will. 4, c. 64 (*b*).

But little weight can attach to the argument, that because an offence falls within two distinct enactments in their ordinary meaning, a secondary construction is to be sought in order to exclude it from either. Thus, an enactment which prohibited under a penalty any person concerned in the administration of the poor laws from supplying goods ordered for the relief of any pauper, would not be construed as not including a poor law guardian, merely because another provision expressly made such officers liable to a much higher penalty for supplying the parish workhouse with goods (*c*). Where one section of an American Act enacted that no ship from a foreign port should unload any of its cargo but in open day, on pain of forfeiture of both goods and ship; and another prohibited the unloading of any ship bound for the United States, before she arrived at the proper place of discharge of her cargo, on pain of forfeiture of the unladen goods; it was held that a foreign ship bound for New York, and unloading a part of her cargo at night at an intermediate harbour in the United States, fell within the former section, and did not escape from it by falling also within the latter. It was observed that there was no

(*a*) Atty.-Genl. *v.* Lockwood, 9 M. & W. 378.

(*b*) Id. *per* Gurney B.

(*c*) Davies *v.* Harvey, LR. 9 QB. 433. Comp. Kettering Union *v.* Northampton, sup. p. 26.

principle of law or interpretation to authorise a Court to withdraw a case from the express prohibitions of one clause, on the ground that the offence was also punished by a different penalty in another. Neither could be held nugatory (*a*).

Where the provisions of one statute are incorporated, by reference, in another, and the earlier statute is afterwards repealed, the provisions so incorporated obviously continue in force, so far as they form part of the second enactment (*b*). Thus, when the 32 & 33 Vict. c. 27, enacted that certain provisions as to appeals to Quarter Sessions, comprised in the 9 Geo. 4, c. 61, should have effect respecting the grant of certificates under the new Act, and the 35 & 36 Vict. c. 94 repealed the Act of Geo. 4, it was held that those provisions remained in full force, so far as they formed part of the 32 & 33 Vict. (*c*).

The 9 Geo. 4, c. 40, s. 54, empowered two justices of the county where a prisoner was detained in custody, who had been acquitted of felony on the ground of insanity, to determine his settlement, and to order his parish to pay such sum as a Secretary of State should direct for his maintenance; and the Act contained also provisions with reference to appeals from such orders. The 3 & 4 Vict. c. 54, s. 7, after reciting

(*a*) The Industry, 1 Gallison, 114.

(*b*) R. *v.* Stock, 8 A. & E. 405; R. *v.* Merionethshire, 6 QB. 343.

(*c*) R. *v.* Smith, LR. 8 QB. 146.

the above section, repealed so much of it as related to the Secretary of State, and enacted that the justices should order the payment of such sum as they should, themselves, direct. Five years later, the Act of Geo. 4 was totally repealed. It was held that the justices had authority to make the order under the Act of 3 & 4 Vict. (*a*), and that perhaps even the right of appeal had been impliedly preserved (*b*).

SECTION VI.—GENERALIA SPECIALIBUS NON DEROGANT.

It is but a particular application of the general presumption against an intention to alter the law beyond the immediate scope of the statute, to say that a general Act is to be construed as not repealing a particular one by mere implication (*c*). A general later law does not abrogate an earlier special one. It is presumed to have only general cases in view, and not particular cases which have been already provided for by a special or local Act, or, what is the same thing, by custom (*d*). Having already given its attention to the particular subject, and provided for it, the Legislature is reasonably presumed not to intend to alter that

(*a*) R. *v.* Stepney, LR. 9 QB. 383.

(*b*) *Per* Blackburn J. Id.

(*c*) Thorpe *v.* Adams, LR. 6 CP. 125; R. *v.* Champneys, Id. 384.

(*d*) Herbert's Case, 3 Rep. 13*b* note U.; Gregory's Case, 6 Rep. 19*b*; R. *v.* Pugh, Doug. 188; Hutchins *v.* Player, Orl. Bridg. 272; Plowd. 36.

special provision by a subsequent general enactment, unless it manifests that intention in explicit language (*a*). It is, therefore, a received maxim of statutory interpretation that generalia specialibus non derogant. The general statute is read as silently excluding from its operation the cases which have been provided for under the special one.

Thus, after the 13 Eliz. c. 10 had declared all leases of ecclesiastical property void, other than for twenty-one years or three lives, leases of house property in towns were excepted from its operation by the 14 Eliz. c. 11; and when, four years later, the 18 Eliz. c. 11, after reciting that a practice had already begun of granting reversionary leases of church property, enacted that "all leases hereafter to be made" by ecclesiastics, of church "lands, tenements and here-"ditaments," should be void, if the old lease was not expired or determined within three years from the grant of the new; it was held that this last Act did not apply to the property dealt with by the 14 Eliz. (*b*).

Where an Act took away the right of bringing an action respecting certain disputes, which were referred to the summary adjudication of justices; it was held that the subsequently established County Courts ac-

(*a*) *Per* Wood V. C. in Fitzgerald *v.* Champneys, 30 LJ. Ch. 782, 2 Jo. & H. 54.

(*b*) *Per* Sir O. Bridgman, in Wyn *v.* Lyn, Bridg. R. by Bannister, 122. This case is not reported in the original edition of Bridgman's judgments, and the Court seems to have been equally divided.

quired no jurisdiction to try such cases, under the general authority to try "all pleas" (*a*).

The General Turnpike Act, 3 Geo. 4, c. 126, which empowers turnpike trustees to let the tolls, and provides that all contracts for letting them shall be valid, though not by deed, "any Acts of Parliament or law to the contrary thereof notwithstanding," was held unaffected by the 8 & 9 Vict. c. 106, which in the most general terms declares that "a lease, required by "law to be in writing, of any tenements and heredita-"ments, shall be void unless made by deed." It was not to be supposed that the Legislature intended by the later Act to interfere with the policy of the earlier one, which was emphatically that a deed should not be required for turnpike tolls (*b*); though it would have been necessary by the general law of the land (*c*). An Act which declared all debtors to be subject to the bankrupt laws, would include debtors who had the privilege of Parliament from personal arrest; but any provisions of those Acts which authorised the arrest of bankrupts would be held inapplicable to a person entitled to the privilege. Unless it expressed a contrary intention plainly, it would be presumed that the Legislature did not intend to interfere with it (*d*).

(*a*) Exp. Payne, 5 D. & L. 679.

(*b*) Shepherd *v.* Hodsman, 18 QB. 316, 21 LJ. QB. 263.

(*c*) R. *v.* Salisbury, 8 A. & E. 716.

(*d*) Newcastle *v.* Morris, LR. 4 HL. 66.

The Act for abolishing fines and recoveries which, in the most comprehensive terms, authorises "every "tenant in tail" to bar his entail in a certain manner, would not be construed as applying to the tenant in tail of property entailed by special Act of Parliament, such as the Shrewsbury, Marlborough, Wellington, and other special Parliamentary entails (*a*). An Act which authorised "any person" to sell beer, who obtained a licence for the purpose, would not repeal the custom or local law of a borough which disqualified all persons who were not burgesses from selling beer (*b*). So, the 50 Geo. 3, c. 41, which empowered licensed hawkers to set up in any trade in the place where they resided, was held not to give them that privilege in a borough where, by custom, or by-law, strangers were not allowed to trade (*c*). Where a railway company had authority, under a special Act, to take certain lands in the metropolis for executing their works on them, it was held that its powers were unaffected by the Metropolis Local Management Act, 18 & 19 Vict. c. 120, which was passed shortly afterwards, giving the same powers to a public body (*d*). So, an Act which authorised the lord of a manor and his heirs to break up the pavement of

(*a*) *Per* Wood V. C. in Fitzgerald *v.* Champneys, ubi sup. See Abergavenny *v.* Brace, LR. 7 Ex. 145; and comp. Re Cuckfield Board, 19 Beav. 153.

(*b*) Leicester *v.* Burgess, 5 B. & Ad. 246.

(*c*) Simson *v.* Moss, 2 B. & Ad. 543.

(*d*) London and Blackwall R. Co. *v.* Limehouse Board, 3 Kay & Johns, 123, 26 LJ. Ch. 164.

the streets of a town, for the purpose of laying down water-pipes to convey water to and through the town, from his estate, would not be affected by a subsequent Act which vested the same streets and pavements in a public body, and empowered it to sue any person who broke them up (*a*).

It is hardly necessary to add, however, that where a contrary intention is expressed or manifested, the maxim under consideration ceases to be applicable. Thus, the Prescription Act, 2 & 3 Will. 4, c. 71, abolished the custom of London which authorised the owner of an ancient house to build a new one on its old foundations to any height, though thereby obscuring the ancient lights of his neighbour (*b*). It has been held that the Dower (*c*) and Inclosure (*d*) Acts apply to gavelkind lands, though this local customary tenure is not expressly mentioned in either Act. Though the sheriffs of the Counties Palatine of Lancaster and Durham were expressly forbidden by the 7 & 8 Geo. 4, c. 71, to arrest on mesne process issuing from the Courts of Westminster, for less than 50*l.*, this enactment was held repealed by the 1 & 2 Vict. c. 110, which after abolishing generally all arrests for debt,

(*a*) Goldson *v.* Buck, 15 East, 372.

(*b*) Salters' Co. *v.* Jay, 8 QB. 109; R. *v.* Mayor of London, 13 QB. 1; Merchant Taylors *v.* Truscott, 11 Ex. 855, 25 LJ. Ex. 173.

(*c*) Farley *v.* Bonham, 2 Jo. & H. 177, 30 LJ. Ch. 239; and see sup. p. 24.

(*d*) Minet *v.* Leman, 7 De G. M. & G. 340, 24 LJ. Ch. 239.

gave a judge power, under certain circumstances, to order such an arrest in every action for any sum for 20*l.* or upwards (*a*). So, the General Lands Clauses Act of 1845, which authorises the compulsory taking of lands for works of public utility, such as railways, and gives corresponding powers to tenants in tail or for life, to convey the lands so required, would apply to tenants tail under special parliamentary entails, such as the Abergavenny entail (*b*). The County Courts acquired jurisdiction, under their general authority to hear "all pleas" where the debt or damage did not exceed 20*l.*, to enforce the payment of a rate imposed under a local Act passed before those Courts were established, and which had made such rates recoverable only by action in the Superior Courts (*c*). A local Act which provided that the prisoners of the borough to which it applied, and which had a separate Quarter Sessions, should be maintained in the county jail on certain specified terms, was held to be superseded by the General Act, 5 & 6 Vict. c. 95, which enacted that every borough which had Quarter Sessions, should, when its prisoners were sent to the county jail, pay the county the expenses, including those of repairs and improvements (*d*).

Where a City gas company had been precluded by

(*a*) Brown *v.* McMillan, 7 M. & W. 196.

(*b*) *Re* Cuckfield Board, 24 LJ. Ch. 585; 19 Beav. 153.

(*c*) Stewart *v.* Jones, 22 LJ. QB. 1, 1 E. & B. 22.

(*d*) Bramston *v.* Colchester, 6 E. & B. 246, 25 LJ. MC. 73.

its private Act from charging more than four shillings for every thousand feet of gas of a certain quality, and the Metropolis Gas Act of 1860 required the City gas companies to supply a better and more expensive gas at the rate prescribed by it, which might amount to five shillings per thousand feet; it was held that the later provision impliedly repealed the earlier prohibition. Here, however, the general Act avowedly applied to the company; and it would have been unreasonable that the better gas which it required, should be supplied at the price mentioned in the special Act, merely because the latter had not been repealed in express terms (*a*).

The Metropolitan Police Act, 2 & 3 Vict. c. 71, s. 47, which provided that penalties under existing and future acts, which should be adjudged by police magistrates, should be paid to the receiver of the police district, and the subsequent Act, 17 & 18 Vict. c. 38 (against gaming houses), which enacted that the penalties which it inflicted should be recoverable before two justices, (or before a police magistrate, since he has the same jurisdiction as two justices,) and should be paid to the overseers of the poor of the parish in which the offence was committed, were construed so as to be consistent with each other, by limiting the application of the penalties under the later

(*a*) Great Central Gas Co *v.* Clarke, 32 LJ. CP. 41, 13 CB. NS. 838. See also Parry *v.* Croydon Gas Co. 15 CB. NS. 568.

Act, to cases where they were imposed by justices, and applying them in conformity with the earlier statute, where they were adjudged by a police magistrate (*a*).

Where a statute contemplates in express terms that its enactments will repeal earlier Acts, by their inconsistency with them, the chief argument or objection against repeal by implication is removed, and the earlier Acts may be more readily treated as repealed. Thus, after a local Act had directed the trustees of a turnpike to keep their accounts and proceedings in books to which "all persons" should have access, the General Turnpike Act, which recited the great importance that one uniform system should be adhered to in the laws regulating turnpikes, and enacted that former laws should continue in force, except as they were thereby varied or repealed, directed that the trustees should keep their accounts in a book to be open to the inspection of the trustees and creditors of the tolls, and that the book of their proceedings should be open to the inspection of the trustees; it was held that the power of inspection of the proceedings given by the first Act to "all persons" was repealed (*b*).

It has been said to be a rule that one private Act of Parliament cannot repeal another except by express enactment (*c*); but necessary implication must, no

(*a*) Wray *v.* Ellis, 1 E. & E. 276, 28 LJ. QB. 45; and see Receiver of Police District *v.* Bell, LR. 7 QB. 433.

(*b*) R. *v.* Northleach, 5 B. & Ad. 978,

(*c*) *Per* Turner L. J. in Birkenhead Docks *v.* Laird, 4 De

doubt, be considered as involved in this expression (*a*). If the later of the two Acts was inconsistent with the continued existence of the earlier one, the latter must inevitably be abrogated (*b*).

G. M. & G. 772, 23 LJ. Ch. 459. See ex. gr. Phipson *v.* Harvett, 2 C. M. & R. 473, sup. 146.

(*a*) Comp. Lord Mansfield's dictum in R. *v.* Abbot, Doug. 553, sup. p. 107.

(*b*) See ex. gr. Daw *v.* Metrop. Board, sup. p. 146.

CHAPTER VIII.

SECTION I.—PRESUMPTION AGAINST INTENDING WHAT IS INCONVENIENT OR UNREASONABLE.

In determining either what was the general object of the Legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most agreeable to convenience, reason, and justice, should, in all cases open to doubt, be presumed to be the true one. An argument drawn from an inconvenience, it has been said, is forcible in law (*a*); and no less force is due to any drawn from an absurdity or injustice. The treaty between Louis XII. and the Pope, which gave the king the right of appointing to "all bishoprics vacated by the "death of bishops in France," was, for instance, properly construed, not as giving him the right of appointing to a foreign bishopric whenever its incumbent happened to die in France, but, more consistently with good sense and convenience, as authorising him to fill the bishoprics of his own kingdom, when their holders died, whether at home or abroad (*b*). If a statute

(*a*) Co. Litt. 97*a*.

(*b*) Puff. L. N. b. 5, c. 12, s. 8.

gives an appeal from a magistrate's decision, "when the "sum adjudged to be paid on conviction shall exceed "two pounds," the question whether the penalty only, or the penalty *plus* the costs were intended, would be decided on similar general considerations of convenience and reason. It would be thought more likely that the Legislature intended to give an appeal only when the offence was of some gravity, and not merely where the costs (which would vary according to the distances to be travelled by the parties and their witnesses, the number of the latter, and similar accidental circumstances) happened to swell the amount above the fixed limit (*a*).

An Act regulating local rates, which gave an appeal against any rate to the Quarter Sessions, and provided, for enforcing its payment, that two justices might issue a distress warrant against the goods of the defaulter, if he did not, on being summoned, "prove to them that he was not chargeable with, or "liable to pay such rate," would not be construed as authorising the justices to enter upon any inquiry into the validity of the rate, if it was valid on its face; though, literally, the defaulter would unquestionably prove his non-liability, if he proved its invalidity. If the question of validity, which was left to the Quarter Sessions, was also open to the justices required to enforce the rate, they might decide against the validity of the rate after it had been adjudged valid by the

(*a*) R. *v.* Warwickshire, 6 E. & B. 837, 25 LJ. MC. 119.

Quarter Sessions (*a*); a conflict which could not readily be supposed to have been intended. It would be otherwise, indeed, if the rate bore invalidity on its face, by not showing that it was made in accordance with the statutory authority given for the purpose; for they could not be required to enforce what did not profess to be a valid demand made by competent authority (*b*).

When an enactment, after requiring that every poor-rate should set forth a number of particulars given in a form, respecting the persons and properties rated, and that the churchwardens and overseers should sign a declaration at the foot of the form, added that "otherwise the rate shall be of no force;" it was held that these last words were confined to the signatures, and did not affect the validity of the rate when the other requisites were neglected; because a different construction would have led to inconveniences, which the Legislature must be presumed not to have intended (*c*).

An Act to provide protection against dogs, which empowered magistrates to make an order that any dog found to be dangerous should "be kept under "proper control or destroyed," would, on this prin-

(*a*) R. *v.* Kingston, E. B. & E. 256, 27 LJ. MC. 199; R. *v.* Bradshaw, 2 E. & E. 836, 29 LJ. MC. 199; Exp. May, 2 B. & S. 426, 31 LJ. MC. 161.

(*b*) *Re* Eastern Counties R. Co., 25 LJ. MC. 49. See R. *v.* Croke, Cowp. 30.

(*c*) R. *v.* Fordham, 11 A. & E. 73. See Cole *v.* Green, 6 M. & Gr. 872.

ciple, be construed as giving the magistrate the option of making an absolute order for the destruction of a dangerous dog; not as requiring that his order should be in the alternative terms of the Act, which would place the option in the hands of the owner of the dog; for this would be much less efficacious and convenient (*a*).

The 24 & 25 Vict. c. 98, which, after making it felony to engrave without authority plates of bank-notes purporting to be notes of the Bank of England or of Ireland, or of any other company, declared in another section that the enactment should not apply to Scotland, except where it was expressly so provided, was held to apply to the engraving of the notes of a Scotch bank; the rational object and meaning of the excluding provision being, not that forgeries against Scotch banks might be committed in England with impunity, but that, when committed in Scotland, they should not fall within the Act (*b*).

Where an Act, after transferring all duties of paving and lighting from existing Commissioners to a Board of Works, provided that all contracts with the former should remain valid, that no action upon them against the commissioners should abate, and that all liabilities under such contracts should be paid out of rates to be made by the new Board; it was held, on the ground of its being the more convenient course, that an action

(*a*) Pickering *v.* Marsh, 43 LJ. MC. 143.

(*b*) R. *v.* Brackenridge, LR. 1 CC. 133.

on a contract made with the Commissioners might be brought against the Board (*a*). The 20 & 21 Vict. c. 43, which authorises a party aggrieved by a decision of justices to apply within three days for a case, and directs that "at the time of the application," and before the case is delivered to him, he shall enter into recognizances to prosecute the appeal, was held substantially complied with if the recognizances were entered into within the three days, though not at the time of the application (*b*). It has been repeatedly held that when an Act gives an appeal to the "next" sessions, it means not necessarily the next which takes place in order of time, but the next to which it is practicable with fair diligence to carry the appeal (*c*). It is obvious that a stricter construction would often have the effect of taking away the appeal which the Legislature intended to give. When an Act gave any person aggrieved (*d*) by an order of justices, four months "for making his complaint to the Quarter "Sessions," it was construed to mean, not that the complaint must be heard within that time, but that the appellant should have that time for notifying his intention to appeal; otherwise he might sometimes

(*a*) Sinnott *v.* Whitechapel, 3 CB. NS. 674, 27 LJ. CP. 177.

(*b*) Chapman *v.* Robinson, 28 LJ. MC. 30, 1 E. & E. 25.

(*c*) R. *v.* Yorkshire, 192; R. *v.* Dorsetshire, 15 East, 200; R. *v.* Sussex, 15 East, 206; R. *v.* Essex, 1 B. & A. 210; R. *v.* Thackwell, 4 B. & C. 62. See R. *v.* Trafford, 15 QB. 200; R. *v.* Watts, 7 A. & E. 461; R. *v.* West Riding, E. B. & E. 713.

(*d*) See R. *v.* Middlesex, 3 B. & Ad. 938.

be limited to a few weeks, or, if no sessions were held within the four months, he would be deprived of his appeal altogether (*a*).

An Act which authorised the Quarter Sessions to give a successful appellant against a conviction costs against the party appealed against, and directed that the notice of appeal should be served on the convicting justice, was construed as not making the latter a party to the appeal; for it was to be presumed that the Legislature did not intend so great an anomaly as rendering a judicial officer liable to costs for an act done *bonâ fide* in the discharge of his judicial functions (*b*). The respondent, in such a case, is the prosecutor before the magistrate; though this construction involves the hardship of making him liable to the costs of a proceeding of which he has had no notice, or perhaps even knowledge.

In the computation of time, distinctions have been made by the Courts which were founded on similar considerations of convenience and justice. The general rule, anciently, seems to have been that both terms or endings of the period given for doing or suffering something were included; but when a penalty or forfeiture was involved in non-compliance with a condition within the given time, the time was reckoned by including one and excluding the other of the terminal

(*a*) R. *v.* Essex, 34 LJ. MC. 41; R. *v.* Middlesex, 6 M. & S. 279.

(*b*) R. *v.* JJ. of Hants, 1 B. & Ad. 564; R. *v.* Purdey, 34 LJ. MC. 4; 5 B. & S. 909.

days (*a*). A distinction was afterwards made, depending on whether the point from which the computation was to be made was an act to which the person against whom the time ran, was privy or not. Thus, if the time ran from when he was arrested, or he received a notice of action, it might justly be computed as including the day of that event; but not so, if it ran from the death of another person (*b*); a fact of which he would not, as in the other cases, necessarily be cognisant. But it has also been laid down that when a period of time allowed to a person is included between the dates of two acts to be done by another person, as where it is enacted that no action shall be brought against a justice until notice of the intention to bring it has been given to him a month before the writ is issued, both the terminal days are to be excluded (*c*).

Similar considerations have determined the manner of measuring distances. These were formerly measured by the nearest and most usual way (*d*); and probably if a person were asked if he lived within twenty miles of another, he would answer by reference to the nearest road (*e*). But if the nearest practicable mode of access were adopted, should it be a carriage-way, or a bridle-

(*a*) De Morgan, Comp. Alm. cited in Sir G. C. Lewis' Obs. and Reas. in Politics, 1, 387*n*.

(*b*) *Per* Sir T. Grant in Lester *v.* Garland, 15 Ves. 247; *per* Parke B. in Young *v.* Higgon, 6 M. & W. 53.

(*c*) *Per* Alderson B. in Young *v.* Higgon, 6 M. & W. 53.

(*d*) 1 Hawk. P. C. c. 26. Wing *v.* Earle, Cro. Eliz. 212, 267.

(*e*) *Per* Coleridge J. in Lake *v.* Butler, 5 E. & B. 92, 24 LJ. QB. 273.

path, or a footpath? If the way were by a tidal river, the distance might vary every hour of the day (*a*). Where there is nothing in the statute to lead to one construction or to another, convenience alone is the guide in such a question (*b*). It is to be presumed that the legislature intends the most convenient and certain mode of measurement, and that is unquestionably as the crow flies; a straight line on a horizontal plane, between the nearest points of the two places or objects (*c*).

A construction which facilitated the evasion of a statute would, on similar grounds of inconvenience, be avoided. Thus, an Act which forbade an innkeeper to suffer any gaming "in his house or premises," was construed as extending to gaming by himself and his personal friends in his private rooms in the licensed premises; for a construction which limited the prohibition to the guests in the public rooms would have opened the door to collusion and evasion (*d*).

Among the illustrations which might be cited in connection with the rule under consideration, is that large class of cases bearing on the construction put on

(*a*) *Per* Lord Campbell, Ibid.

(*b*) *Per* Erle J. Ibid.

(*c*) Lake *v.* Butler, ubi sup.; Jewell *v.* Stead, 6 E. & B. 350, 25 LJ. QB. 294; R. *v.* Saffron Walden, 9 QB. 76; Duignan *v.* Walker, 1 Johns. 446, 28 LJ. Ch. 867; Mouflet *v.* Cole, LR. 8 Ex. 32.

(*d*) Patten *v.* Rhymer, 3 E. & E. 1; 29 LJ. MC. 189.

the numerous provisions which limit the time and regulate the procedure for bringing actions for things done "under," or "by virtue," or "in pursuance of" statutory powers; or "in the execution," or "by virtue "of" an office. If such enactments were construed literally, they would be futile; for a thing really done in compliance with an Act or in the execution of a duty is not actionable, and needs no special statutory protection. All such provisions are obviously intended and have been construed to protect acts which are not legal or justifiable; and the result of a great number of decisions seems to be that they give protection in all cases where the defendant did, or neglected, what is complained of, under colour of the statute; that is, with the honest intention of acting under its authority, and actually, whether reasonably or not, believing in the existence of such facts or state of things as would, if really existing, have justified his conduct (*a*). Thus, if an Act authorised the arrest of a person who entered the dwelling-house of another at night with intent to commit a felony (24 & 25 Vict. c. 96, s. 51), an arrest made in the honest belief that the person arrested had entered with that intent, would be pro-

(*a*) See, among many other authorities, Parton *v.* Williams, 3 B. & A. 330; Roberts *v.* Orchard, 2 H. & C. 769, 33 LJ. Ex. 65; Hughes *v.* Buckland, 15 M. & W. 346; Booth *v.* Clive, 10 CB. 827, 2 L. M. & P. 283; Kine *v.* Evershed, 10 QB. 143; Hermann *v.* Seneschal, 32 LJ. CP. 43; Downing *v.* Capel, LR. 2 CP. 461; Leete *v.* Hart, Id. 3 CP. 322; Chamberlain *v.* King, Id. 6 CP. 474; Selmes *v.* Judge, Id. 6 QB. 724.

tected, but not if the belief were only that he had attempted to enter; a different offence, for which the enactment in question does not authorise arrest (*a*). The reasonableness of the belief is immaterial, if the belief be honest; though it is an important element in determining the question of honesty (*b*).

Acts which impose a pecuniary penalty have sometimes given rise to a question, when there were two or more offenders, whether one joint or several separate penalties were intended; and this, where the Act has left it open to doubt, has been said to depend on whether the offence was in its nature joint or several. When the offence is one in which every participator is justly punishable in proportion to the part which he took in it, the inference would obviously be that a separate penalty on each was intended. In the offence of assaulting and resisting a custom-house officer, one may resist, another molest, a third run away with the goods; all are distinct acts, each a separate offence, and each offender would be liable for his own separate offence (*c*). So, under the Toleration Act, which enacts that if any person or persons maliciously disturb a congregation, such "person or "persons" shall, on conviction of "the said offence,"

(*a*) Roberts *v.* Orchard, 2 H. & C. 769; Leete *v.* Hart, LR. 3 CP. 322.

(*b*) Chamberlain *v.* King, LR. 6 CP. 474.

(*c*) *Per* Lord Mansfield in R. *v.* Clarke, Cowp. 610.

be liable to a penalty of 20*l.*; it was held that every person engaged in such a disturbance would be liable to a separate penalty (*a*).

So, where two men were convicted of an assault and sentenced to pay one penalty, under the 9 Geo. 4, c. 31, the conviction was quashed; because a penalty ought to have been imposed on each offender severally, the offence being in its nature several (*b*). And under the 1 & 2 Will. 4, c. 32, s. 30, which enacts that if "any person" shall trespass in the daytime on land in search of game, "such persons" shall be liable to a penalty of two pounds, every offender is liable to a separate penalty (*c*).

But it has been said that where the offence is in its nature single, and is punished by a pecuniary penalty, only one penalty can be imposed on all the offenders jointly; that if it is the offence, and not the offender, that is visited with punishment by the statute, only one penalty is incurred, however large may be the number of persons who incurred it. Thus, under the statute of Anne, which enacted that if any unqualified "person or persons" kept or used hounds for destroying game, "the person or persons" so offending should forfeit five pounds, it was held that to keep or use a greyhound for such a purpose was punishable by one penalty only, whether the dog was kept or used by

(*a*) R. *v.* Hube, 5 TR. 542.

(*b*) Morgan *v.* Brown, 4 A. & E. 515. See also R. *v.* Martin, 5 QB. 591.

(*c*) Mayhew *v.* Wardley, 14 CB. NS. 550.

one or by several persons. Only one dog was kept, it was said, and only one penalty, falling on all the offenders jointly, was imposable (*a*). The decision has been perhaps better defended on the ground that the Act, in speaking of "persons" in the plural, and providing that for such "offence," in the singular, they should pay five pounds, and not five pounds "each," one joint offence and penalty were contemplated (*b*). In an old case cited in support of this construction, it was held that the statute 1 & 2 Phil. & M. c. 12, which prohibited the impounding of a distress in a wrong place, "upon pain every person offending should forfeit to the party grieved for every such offence" a hundred shillings and treble damages, gave only one penalty against three persons (*c*). But although this decision is said to have been based on the ground that the offence was one only, and joint, the penalty was recoverable only by the party grieved, and was consequently to be regarded as a compensation to him, not as a punishment on the offenders (*d*). Viewed in this light, it is clear that only one penalty could be recovered; for the injury was the same, whether it was done by one or by several persons; and it could hardly

(*a*) Hardyman *v.* Whitaker, 2 East, 573*n*; R. *v.* Matthews, 10 Mod. 26; R. *v.* Bleasdale, 4 TR. 809.

(*b*) *Per* Alderson B., 12 M. & W. 42.

(*c*) Partridge *v.* Naylor, Cro. Eliz. 480, cited in R. *v.* Clarke, Cowp. 610.

(*d*) See ex. gr. Stevens *v.* Jeacocke, 1 QB. 731.

have been intended that the pecuniary compensation for a wrong should vary in amount with the number of persons concerned in doing it.

In referring to cases of this kind, Lord Mansfield observed that if partridges were netted by night, two or three or more men might draw the net, but still it constituted but one offence; and that killing a hare was but one offence, whether one killed it or twenty, and that it could not be killed more than once (*a*). But however pertinent such considerations might be in measuring the damage done to the owner of the game, they seem less applicable to the question of punishing, on public grounds, a breach of the law. The question whether the offence was joint or several evidently arose, not from the nature of the offence, but from the nature of the penalty. If the penalty had been corporal instead of pecuniary, the distinction between joint and several offences could hardly have occurred; for it would have been found difficult to apply the rule of one joint penalty to two offenders sentenced to five weeks' imprisonment or twenty-five lashes. It may be submitted that the question whether the penalty is to be understood as separate or joint, where the Act is not explicit, would be better governed by the consideration whether the penalty was intended as compensation for a private wrong, or as a punishment for an offence against public justice.

(*a*) In R. *v.* Clarke, Cowp. 612.

It is hardly necessary to add that all such considerations are immaterial where the language of the Act is not open to doubt. Thus, where it was enacted that "every person" who assisted in unshipping or concealing prohibited goods should forfeit treble their value or 100*l.*, at the election of the Commissioners of Customs, it was held that every person concerned in the offence was liable to a separate penalty (*a*); although undoubtedly the offence was as joint in its nature as in the case of the wrongful removal of the distress (*b*).

SECTION II.—PRESUMPTION AGAINST INTENDING INJUSTICE OR ABSURDITY.

Whenever the language admits of two constructions, according to one of which the enactment would be unjust, absurd, or mischievous, and according to the other it would be reasonable and wholesome, it is obvious that the latter must be adopted as that which the Legislature intended (*c*). Thus, where a bye-law authorised the Poulterers' Company to fine "all "poulterers in London or within seven miles round," who refused to be admitted into their company, it was held that, inasmuch as no poulterer could legally belong to the company who was not also a freeman of the City, the bye-law was to be construed as limited

(*a*) R. *v.* Dean, 12 M. & W. 140.

(*b*) Partridge *v.* Naylor, sup. 177.

(*c*) *Per* Lord Campbell in R. *v.* Skeen, 28 LJ. MC. 98, Bell, 97; *per* Keating J. in Boon *v.* Howard, LR. 9 CP. 308.

to those poulterers who were also freemen; to avoid the injustice of punishing men for refusing to enter into a company to which they could not legally belong (*a*). So, in the sections 112 and 198 of the Bankrupt Act of 1849, which protected a bankrupt from arrest by his "creditors," this word was construed as limited to those creditors who had debts provable under the bankruptcy; for it would have been obviously unjust, and was therefore presumably not intended, that his certificate should protect a bankrupt not only against those creditors who had, or might have proved under the bankruptcy, but against creditors whose claims were not barred by it (*b*).

A statute which enacts that a person who has been convicted by justices of an assault, and has suffered the punishment awarded for it, shall be released from all other proceedings "for the same cause," would not be construed as exempting him from prosecution for manslaughter, if the party assaulted afterwards died from the effects of the assault; such a construction would defeat the ends of justice (*c*). An Act which imposed a penalty on any sheriff or bailiff who carried a person arrested for debt to prison for twenty-four hours, though it might render the former liable for the

(*a*) Poulterers' Co. *v.* Phillips, 6 Bing. NC. 314.

(*b*) Grace *v.* Bishop, 11 Ex. 424; Phillips *v.* Poland, LR. 1 CP. 204; *Re* Poland, LR. 1 Ch. 356; Williams *v.* Rose, 3 Ex. 5, *per* Bramwell B.

(*c*) R. *v.* Morris, LR. 1 CC. 90.

act of the latter, his servant, as well as for his own, would not be construed to admit of his being sued, after the penalty had been recovered from the bailiff; for this would be to give the plaintiff a second penalty for the same act, after he had been compensated by the first; and would, indeed, make the bailiff liable to pay twice, as he would be bound by the usual bond to indemnify the sheriff (*a*).

An Act (5 & 6 Vict. c. 39, s. 6) which protected a fraudulent agent from conviction, if he "disclosed" his offence on oath, in any examination in bankruptcy, was held not to include a confession made there after commitment by a magistrate, and which was in substance only a repetition of the facts proved before the latter; on the ground that it would have been absurd and mischievous to enable a man to provide an indemnity for himself, by simply making a statement of facts already known and provable *aliunde*, and not in any way advancing either civil or criminal justice by the alleged "disclosure" (*b*).

Enactments which authorise the imposition of rates and similar burdens on inhabitants have been repeatedly held not to authorise, without express words, a retrospective charge; for this would throw on one set of persons a burden which ought to have been borne by another at a former period (*c*).

(*a*) Peshall *v.* Layton, 2 TR. 712.

(*b*) R. *v.* Skeen, Bell, 97, 28 LJ. MC. 91. So held by nine judges against five.

(*c*) Tawny's Case, 2 Salk.

An Act which prohibits the negligent use of furnaces in such a manner as not to make them consume smoke "as far as possible," means only so far as the smoke can be consumed consistently with the due carrying on of the business for which the furnace is used, and not as far as it is physically possible to consume it, without regard to the detriment which the business carried on would suffer; the Act not having expressed any intention to interfere with it (*a*). The Carriers Act (11 Geo. 4 & 1 Will. 4, c. 68), which exempts carriers from responsibility for the loss of certain articles worth more than ten pounds, unless their nature and value are declared, but enacts also that the Act shall not affect any special contract of carriage, was construed not literally, as making the Act inapplicable whenever any special contract was made, but only as not affecting any special contract inconsistent with the exemption provided by the Act (*b*). The ordinary stipulation in a bill of lading, excepting liability for breakage, leakage, and damage, would be similarly limited in construction, as not extending to any such injury caused by the shipowner or his servants (*c*).

531; Newton *v.* Young, 1 B. & P. N.R. 187; R. *v.* Maulden, 8 B. & C. 78; Waddington *v.* London Union, 28 LJ. MC. 103; R. *v.* Stretfield, 32 LJ. MC. 236; Bradford Union *v.* Wilts, LR. 3 QB. 604. Comp. Harrison *v.* Stickney, 2 HL. 108.

(*a*) Cooper *v.* Woolley, LR. 2 Ex. 88.

(*b*) Baxendale *v.* The G. E. R. Co., LR. 4 QB. 245.

(*c*) Phillips *v.* Clark, 2 CB. NS. 156; Czech *v.* Gen. Steam Nav. Co., LR. 3 CP. 14.

It is to be borne in mind that the injustice and hardship which the Legislature is presumed not to intend is not merely such as may occur in individual and exceptional cases only. Laws are made ad ea quæ frequentius accidunt (*a*); and individual hardship not unfrequently results from enactments of general advantage. The argument of hardship has been said to be always a dangerous one to listen to (*b*). It is apt to introduce bad law (*c*); and has occasionally led to the erroneous interpretation of statutes (*d*). Courts must look at hardships in the face rather than break down the rules of law (*e*); and if, in all cases of ordinary occurrence, the law, in its natural construction, is not inconsistent, or unreasonable, or unjust, that construction is not to be departed from merely because, in some particular case, it may operate with hardship or injustice (*f*).

(*a*) Dig. 1. 9. 3—10.

(*b*) *Per* Cur. in Munro *v.* Butt, 8 E. & B. 754.

(*c*) *Per* Rolfe B. in Winterbottom *v.* Wright, 10 M. & W. 116; Brand *v.* Hammersmith R. Co., LR. 2 QB. 241; Adams *v.* Graham, 33 LJ. QB. 71.

(*d*) Comp. ex. gr. Perry *v.* Skinner, 2 M. & W. 471, with R. *v.* Mill, 10 CB. 379, 1 L. M. & P. 695; and R. *v.* Shiles, 1 QB. 919, and Welch *v.* Nash, 8 East, 394, with R. *v.* Phillips, 35 LJ. MC. 217, LR. 1 QB. 648.

(*e*) *Per* Lord Eldon in the Berkeley Peerage, 4 Camp. 419; and in Jesson *v.* Wright, 2 Bligh, 55.

(*f*) See *per* Parker B. in Miller *v.* Salomons, 21 LJ. Ex. 192.

SECTION III.—CONSTRUCTION AGAINST IMPAIRING OBLIGATIONS, OR PERMITTING ADVANTAGE FROM ONE'S OWN WRONG.

On the general principle of avoiding injustice and absurdity, any construction would be rejected, if escape from it were possible, which enabled a person to defeat a statute, or impair the obligation of his contract by his own act, or otherwise to profit by his own wrong. Thus, an Act which authorised justices to discharge an apprentice under certain circumstances from his indenture, "on the master's appearance" before them, would justify a discharge in his wilful absence. The Act, it was observed, must have a reasonable construction, so as not to permit the master to take advantage of his own obstinacy. It would be very hard that, supposing the master was profligate and ran away, the apprentice should never be discharged (*a*). For similar reasons, an Act (30 & 31 Vict. c. 84) which authorised a justice to summon a parent "to appear with his child" before him, for breach of the Vaccination Act, and "upon his appear-"ance," to order the vaccination of the child, if he should find that it had not already undergone that operation, was held to authorise such an order without the appearance of the child, when the parent refused to produce it. A literal construction, making the production of the child a condition precedent to

(*a*) Ditton's Case, 2 Salk. 490.

the making of the order, would have involved the supposition that the Legislature had intended to allow the parent to defeat its object by disobeying the summons which it had ordered (*a*).

Although the 9 Anne, c. 14, enacted that bills and notes, founded on the consideration of money lost at play, should be "utterly frustrate, void, and of none "effect, to all intents and purposes," its operation was confined to preventing the drawer (or any person claiming under him (*b*)) from recovering from the loser; but it left the instrument unaffected in the hands of an innocent indorsee for value suing the drawer (*c*). The statute was construed as if the words were voidable as against certain persons only, but were valid as regards others.

So, where an Act provided that if the purchaser at an auction refused to pay the auction duty, when this was made a condition of sale, his bidding should be "null and void to all intents and purposes," it was held that the object of the enactment was completely attained by making the bidding void only at the option of the seller; thus avoiding the injustice and impolicy of enabling a man to escape from the obligation of his contract by his own wrongful act, which a literal construction would have involved (*d*).

(*a*) Dutton *v.* Atkins, LR. 6 QB. 673.

(*b*) Bowyer *v.* Bampton, 2 Stra. 1155.

(*c*) Edwards *v.* Dick, 4 B. & A. 212.

(*d*) Malins *v.* Freeman, 4 Bing. NC. 395.

An enactment that a company should not issue any share, that no share should vest until one-fifth of its amount was paid up, and that the shareholder who had not paid up one-fifth should have no right of property in the shares allotted to him, or capacity to transfer them, was considered as limited protection to the public. To construe it as applying also to the benefit of the shareholder, would have been to absolve him from liability to pay up calls until he had paid the requisite proportion; or, in other words, to enable him to profit by his own default—a consequence too unjust and unreasonable to have been intended (*a*).

On similar grounds, enactments which abridge the effect or avoid conveyances, contracts, and instruments, have generally received a construction more compatible with the obvious object and policy of the Legislature than with the natural meaning of the language. Thus, though the Acts of 1 & 13 Elizabeth made "utterly void and of none effect, to all intents, constructions, and purposes," all leases by ecclesiastical persons and bodies, other than for twenty-one years or three lives, the prohibited leases have always been held valid as against the lessor, when a corporation sole, and even when a corporation aggregate with a head, during the life of its head (*b*). When it has no head, indeed, the Act receives necessarily its primary and

(*a*) East Gloucestershire R. Co. *v.* Bartholomew, LR. 3 Ex. 15.

(*b*) Bishop of Salisbury's Case, 10 Rep. 606.

natural meaning; and the lease is void ab initio. If it did not make the lease altogether bad, the latter would be altogether good (*a*); which would be contrary to every possible construction of the Act.

An Act which required that indentures for binding parish apprentices should be for the term of seven years at least, declaring that otherwise they should be "void to all intents and purposes, and not available "in any court or place for any purpose whatever," was held, nevertheless, to make an indenture for a shorter term only voidable at the option of the master or apprentice, or at all events to leave it so far valid that service under it sufficed to gain a settlement (*b*).

The Act of Hen. 7, c. 4, which declared that gifts of goods and chattels in trust for the donor and in fraud of his creditors should be "void and of none effect," was early held to be so only as to those who were prejudiced by the gift, but not as between the parties (*c*). And the 13 Eliz. c. 5, would not include a conveyance for valuable consideration, though made with intent to defeat an execution creditor (*d*). Even as regards the persons prejudiced, the transaction is not void *ipso facto*, but

(*a*) See *per* Cresswell J. in Young *v.* Billiter, 25 LJ. QB. 178; 6 E. & B. 1.

(*b*) R. *v.* St. Nicholas, 2 Stra. 1066, Ca. Temp. Hardw. 323; Gray *v.* Cookson, 16 East, 13; R. *v.* St. Gregory, 2 A. & E. 107; Oakes *v.* Turquand, LR. 2 HL. 325.

(*c*) Ridler *v.* Punter, Cro. Eliz. 291; Bessey *v.* Windham, 6 QB. 166.

(*d*) Wood *v.* Dixie, 7 QB. 892; Darvill *v.* Terry, 30 LJ. Ex. 354, 6 H. & N. 807. See Harvey *v.* Wigmore, Ex. H.T. 1875.

only voidable at their option (*a*). The 137th section of the Bankrupt Act of 1849, which enacted that a judge's order to enter up judgment made against a trader with his consent, should be "null and void to "all intents and purposes whatever," if not filed as required by the Act, was construed as making the judgment void only as against his assignees, but not as against himself. A literal construction would have enabled the trader to treat his creditor who took out execution on the judgment to which he had consented, as a trespasser (*b*). On the same ground, a section which declared a warrant of attorney under certain circumstances "void to all intents and purposes," was held to mean only that it was void against the assignees in bankruptcy of the person who had given it; although in another section the warrant was declared to be "void against the assignees" if not filed. The difference in the language of the two sections was considered by the majority of the Court as insufficient to establish any substantial difference of intention, when the consequence would be to enable a person to defeat his own act (*c*).

Though the Sunday Act has the effect of avoiding contracts made on Sunday by and with tradesmen and

(*a*) See the cases in Young *v.* Billiter, 25 LJ. QB. 169, 30 LJ. QB. 158; 6 E. & B. 1, 8 H.L. 682.

(*b*) Bryan *v.* Child, 1 L. M. & P. 429.

(*c*) Morris *v.* Mellin, 6 B. & C. 446; Bennet *v.* Daniel, 10 B. & C. 500.

other classes of persons, in the course of their ordinary calling, the invalidity affects only those persons who, when contracting with them, knew their calling; but those who dealt with them in ignorance of it would be entitled to sue on the contract (*a*).

In all these cases the intention of the Legislature was considered as completely carried out by the restricted scope given to its enactments. But where, having regard to the general policy of the Act as well as to the language and the structure of the sentence, it would not have that effect, the words abridging or avoiding the effect of instruments, contracts, and dealings would receive their primary and natural meaning, though thus enabling a person to defeat his own act. Thus, it has been held that the owner of a vessel who pledges the ship's certificate of registry for good consideration, may redemand the certificate, and sue the pledgee if he does not return it; the 50th section of the Merchant Shipping Act of 1854 and the plain policy of the law expressly forbidding all dealings with the certificate except for the purposes of navigation (*b*). So, in the case cited in an earlier page, where an Act recited the mischiefs occasioned by binding parish apprentices without the sanction of justices, and enacted that no indenture of such apprenticeships should be valid unless approved by two justices, under their hands and seals, it was held that an indenture, approved

(*a*) Bloxome *v.* Williams, 3 B. & C. 232.

(*b*) Wiley *v.* Crawford, 1 B. & S. 253, 30 LJ. 319.

under hand but not under seal, was absolutely void (*a*). The same effect was given, in an action by the trustees against their lessee for rent which had been made payable to them, to an Act which provided that every lease of turnpike tolls should make the rent payable to the treasurer, in default of which it should be "null and void" (*b*).

It has been said that, where a statute not only declares a contract void, but imposes a penalty for making it, it is not voidable merely (*c*). In general, however, it would seem that where the enactment has relation only to the benefit of particular persons, the word "void" would be understood as "voidable" only, at the election of the persons for whose protection the enactment was made, and who are capable of protecting themselves; but that when it relates to persons not capable of protecting themselves, or when it has some object of public policy in view which requires the strict construction, the word receives its natural full force and effect (*d*).

SECTION IV.—RETROSPECTIVE OPERATION.

Upon the presumption that the Legislature does not

(*a*) R. *v.* Stoke Damerell, 7 B. & C. 563. Sup. p. 8.

(*b*) Pearse *v.* Morrice, 2 A. & E. 84. Comp. Hodson *v.* Sharpe, 10 East, 350.

(*c*) Gye *v.* Felton, 4 Taunt. 876.

(*d*) See *per* Bayley J. in R. *v.* Hipswell, 8 B. & C. 471. See also Betham *v.* Gregg, 10 Bing. 352, and Storie *v.* Winchester, 17 CB. 953.

intend what is unjust rests the leaning against giving a statute a retrospective operation (*a*). It is a general rule that all statutes are to be construed to operate in future, unless, from the language, a retrospective effect be clearly intended (*b*). Nova constitutio futuris formam imponere debet, non præteritis. It has been said that nothing but clear and express words will give a retrospective effect to a statute, and that however much the present tense may be used in it, it must be construed as applying only to future matters (*c*). Even a statute which confers a benefit, such as abolishing a tax, would not be construed retrospectively to relieve the persons in the property already subject to the burden before it was abolished. Thus, it was held that an Act passed in August, providing that on all goods captured from the enemy, and made prize of war, a deduction of one third of the ordinary duties should be made, did not apply where the prize with her cargo had been brought into port in June, when certain duties accrued due, and had been condemned in September (*d*). A retrospective operation was given to the 2 & 3 Vict. c. 37, which declared that no loans should be void by reason of any law against usury; so that a contract of loan, invalid when made by the Act of 12 Anne, was enforced (*e*).

(*a*) 2 Inst. 292.

(*b*) *Per* Story J. in Prince *v.* U.S., 2 Gallison, 208.

(*c*) *Per* Pollock C. B. in Young *v.* Hughes, 28 LJ. Ex. 164; 4 H. & N. 76; Vansittart *v.* Taylor, 24 LJ. QB. 199; 4 E. & B. 910.

(*d*) Prince *v.* U.S., 2 Gallison, 204.

(*e*) Hodgkinson *v.* Wyatt, 4 QB. 758.

It is where the enactment would prejudicially affect vested rights, or the legal character of past Acts, that the presumption against a retrospective operation is strongest. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature (*a*), to be intended not to have a retrospective operation (*b*). Thus, the provision of the Statute of Frauds, that no action should be brought to charge any person on any agreement made in consideration of marriage, unless the agreement were in writing, was held not to apply to an agreement which had been made before the Act was passed (*c*). The Mortmain Act, in the same way, was held not to apply to a devise made before it was enacted (*d*). So, it was held that the Act of 8 & 9 Vict. c. 106, which made all wagers void, and enacted that no action should be brought or maintained for a wager, applied only to wagers made after the Act was passed (*e*). The 20 Vict.

(*a*) *Per* Chancellor Kent in Dash *v.* Van Kleek, 7 Johnson, 54.

(*b*) *Per* Story J. in Soc. for Propag. of Gospel *v.* Wheeler, 2 Gallison, 139; and see *per* Chase C. J. in Calder *v.* Bull, 3 Dallas, 390.

(*c*) Gilmore *v.* Shuter, 2 Lev. 227; 2 Mod. 310; Ash *v.* Abdy, 3 Swanst. 664. See also Doe *v.* Page, 5 QB. 767; Doe *v.* Bold, 11 QB. 127.

(*d*) Attorney-General *v.* Lloyd, 3 Atk. 551; Ashburnham *v.* Bradshaw, 2 Atk. 36.

(*e*) Moon *v.* Durden, 2 Ex. 22; Pettamberdass *v.* Thackoorseydass, 7 Moo. PC. 239.

c. 19, which declared that extra-parochial places should, for, among other things, poor-law purposes, be deemed parishes, was held not retrospective, so as to confer the status of irremovability on a pauper who had resided in such a place for five years before the act (*a*).

When the law is altered pending an action, the rights of the parties are decided according to the law as it existed when the action was commenced, unless the new statute shows a clear intention to vary such rights (*b*). Thus, the Medical Act, 21 & 22 Vict. c. 90, which enacts that no person shall, after the 1st of January 1859, recover any charge for medical treatment "unless he shall prove at the trial" that he was on the Medical Register, was held not to apply to an action for medical services, begun before that date, but tried after it (*c*).

The Bankrupt Act of 1849, which made a deed of arrangement by a trader with six-sevenths of his creditors binding on the non-executing creditors, was held to apply only to deeds executed after the passing of the Act (*d*). So, it was held that the heavier legacy duty

(*a*) R. *v.* St. Sepulchre, 28 LJ. MC. 187, 1 E. & E. 813.

(*b*) Hitchcock *v.* Way, 6 A. & E. 943; R. *v.* Wix, 2 B. & Ad. 197.

(*c*) Thistleton *v.* Frewer, 31 LJ. Ex. 230; Wright *v.* Greenroyd, 1 B. & S. 758; 31 LJ. QB. 4; see Leman *v.* Housley, LR. 10 QB. 66.

(*d*) Marsh *v.* Higgins, 9 CB. 551; 1 L. M. & P. 253; Larpent *v.* Bibby, 5 H. L. 481; 24 LJ. QB. 301; Noble *v.* Gadban, 5 HL. 504. See also Reed *v.* Wiggins, 13 CB. NS. 220; 32 LJ. CP. 131. Comp. Exp. Dawson, C.J. Bank., Feb., 1875.

imposed on annuities by the Succession Act of 1853 did not affect an annuity left by a testator who died before that Act came into operation, though the payment was not made till after it was in force (*a*). Although the Divorce Act, 20 & 21 Vict. c. 85, provided that when a magistrates' order for protecting a deserted married woman's property against her husband was made, the woman should be, and "be deemed to have been during the desertion," capable of suing and being sued, such an order would not enable her to maintain an action which she had begun before the order, but after the desertion (*b*). She had no right to sue before the order was obtained, and the Act did not intend to cast a liability on the defendants that they were not under, and take away their defence from them, by such an order (*c*).

The 5 & 6 Will. 4, c. 83, s. 1, which empowered a patentee, with the leave of the Attorney-General, to enroll a disclaimer of any part of his invention, and declared that such disclaimer should be deemed and taken to be part of his patent and specification, was construed by the Court of Exchequer as enacting that "from henceforth" the disclaimer should be so taken; the interpolation being deemed justifiable to avoid the apparent injustice of giving a retrospective effect to the disclaimer, and making a man a trespasser by

(*a*) *Re* Earl Cornwallis, 25 LJ. Ex. 149; 11 Ex. 580.

(*b*) The Midland R. Co. *v.* Pye, 10 CB. NS. 179; 30 LJ. CP. 314.

(*c*) *Per* Erle CJ. Id.

relation (*a*). But this construction was rejected by the Common Pleas, on the ground that there was no injustice in making the enactment retrospective (*b*).

The 23 & 24 Vict. c. 38, s. 4, which enacted that no judgment which had not already been, or should not thereafter be entered and docketed, should have any preference against heirs or personal representatives in the administration of the property of the deceased debtor, did not, for a similar reason, extend to a judgment obtained against a debtor who had died before the Act was passed (*c*). But if the debtor had not died until after the Act, the omission to register would have been fatal, as that step was made by the Act essential to the creditor's right (*d*); and it would not be giving a retrospective operation to the Act to apply it to a state of circumstances not past and complete, but continuing after it was passed (*e*).

In the same way, the first section of the Mercantile Law Amendment Act of 1856, which provides that no *fi. fa.* shall prejudice the title to goods, of a *bonâ fide* purchaser for value, before actual seizure under the writ, was held not to apply where the

(*a*) Perry *v.* Skinner, 2 M. & W. 471; and *per* Cresswell J. in Stocker *v.* Warner, 1 CB. 167.

(*b*) R. *v.* Mill, 10 CB. 379.

(*c*) Evans *v.* Williams, 2 Dr. & S. 324; 34 LJ. Ch. 661.

(*d*) Kemp *v.* Waddingham, LR. 1 QB. 355.

(*e*) See *ex. gr.* Vine *v.* Leeds, *inf.*

writ had been delivered to the sheriff before the Act was passed. As the execution creditor had the goods already bound by the delivery of the writ, the statute, if retrospective, would have divested him of a right which he had acquired (*a*).

The 5th section of the same Act, which entitles a surety who pays the debt of his principal, to an assignment of the securities for it held by the creditor, would apply to the case of a surety who had entered into the suretyship before the Act, but had paid off the debt after it came into operation (*b*).

The 14th section of the same Act, which provides that a debtor shall not lose the benefit of the Statute of Limitations by his co-debtor's payment of interest in part payment of the principal, was held not to affect the efficacy of such a payment made before the Act was passed (*c*). A different decision would have deprived the creditor of a right of action against one of his debtors.

However, when the intention is clear that the Act should have a retrospective operation, it must unquestionably be so construed, however unjust and hard the consequences may appear (*d*). Thus, after the passing of Lord Tenterden's Act, 9 Geo. 4, c.

(*a*) Williams *v.* Smith, 4 H. & N. 559; 28 LJ. Ex. 286.

(*b*) *Re* Cochran's Estate, LR. 5 Eq. 209.

(*c*) Jackson *v.* Woolley, 8 E. & B. 778; 27 LJ. QB. 448.

(*d*) See *ex. gr.* Stead *v.* Carey, 1 CB. 496.

14, which enacted that in actions grounded upon simple contracts, no verbal promise should be "deemed "sufficient evidence" of a new contract to bar the Statute of Limitations, it was held that such a promise given before the Act, and which was then sufficient to bar the statute, could not be received in evidence in an action begun before, but not tried till after the passing of the Act (*a*). This decision has been supported on the ground that the time for deciding what is, or is not evidence, is when the trial takes place; and that when the Act told the judge what was and was not then to be evidence, he was bound to decide in obedience to it (*b*). Some stress, also, was laid on the circumstance that the Act did not come into operation until eight months after its passing; and the concession of this interval was thought to show that the hardship in question had been in the contemplation of the legislature, and had been thus provided for (*c*). On this ground, it was held that the 11 & 12 Vict. c. 43, s. 11, which limits the time for taking summary proceedings before justices to six months from the time when the matter complained of arose, was held fatal to proceedings begun after the passing of the Act, in respect of a matter which had

(*a*) Hilliard *v.* Lenard, M. & M. 297; Towler *v.* Chatterton, 6 Bing. 258.

(*b*) *Per* Cresswell J. in Marsh *v.* Higgins, 9 CB. 551, 1 L.M. & P. 263. But comp. Wright v. Greenroyd, 31 LJ. QB. 4, *sup.* p. 193.

(*c*) *Per* Park J. 6 Bing. 264.

arisen more than six months before it was passed (*a*); though the interval between the passing of the Act and its coming into operation was only six weeks. If the Act had come into immediate operation, it was observed, the hardship would have been so great, that the inference might have been against an intention to give it a retrospective operation; but the provision suspending its operation, for however short a time, was to be taken as an intimation that the legislature had provided it as the period within which proceedings respecting antecedent matters might be taken (*b*).

In the same way the 10th section of the Mercantile Law Amendment Act 1856, which enacted that no person should be entitled to commence an action after the time limited, by reason of his being abroad or in prison, was held to apply to causes of action which had accrued before the Act was passed. But some weight was due to the circumstance that another section of the same Act kept alive in express terms a cause of action already accrued, and thus afforded the inference that no such intention had been entertained, as none was expressed, as regards cases under the 10th section (*c*).

(*a*) *Re* Edmundson, 17 QB. 67. S. C. nom. R. *v.* Leeds and Bradford R. Co., 21 LJ. QB. 193.

(*b*) *Per* Lord Campbell, 21 LJ. QB. 195.

(*c*) Cornill *v.* Hudson, 8 E. & B. 429; 27 LJ. QB. 8; Pardo *v.* Bingham, LR. 4 Ch. 735. Comp. the judgment of Lord Campbell in R. *v.* Leeds R. Co., 21 LJ. MC. 193.

In both of the above cases, however, the construction, though fatal to the enforcement of a vested right, by shortening the time for enforcing it, did not in terms take away any such right; and, in both, it seems to fall within the general principle that the presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the Courts (*a*), even where the alteration which the statute makes has been disadvantageous to one of the parties. Although to make a law for punishing that which, at the time when it was done, was not punishable, is contrary to sound principle; a law which merely alters the procedure may, with perfect propriety, be made applicable to past as well as future transactions (*b*); and no secondary meaning is to be sought for an enactment of such a kind. It does not follow that because a suitor has a cause of action, he has also a vested right to enforce it by the course of procedure and practice which was in force when he began his suit. He has only the right of prosecuting it in the manner prescribed for the time being, by or for the Court in which he sues; and if an Act of Parliament alters that mode of procedure, he has no other right than to proceed according to the altered mode (*c*). The remedy does

(*a*) Wright *v.* Hale, 6 H. & N. 227; 30 LJ. Ex. 40.

(*b*) Macaulay's Hist. Eng. vol. iii. 715; and vol. v., 43.

(*c*) See the judgments of Wilde B. in Wright *v.* Hale, 30 LJ. Ex. 40; 6 H. & N. 227; and of Lord Wensleydale in Atty.-

not alter the contract or the tort; it takes away no vested right, for the defaulter can have no vested right in a state of the law which left the injured party without, or with only a defective, remedy. If the time for pleading were shortened, or new powers of amending were given, it would not be open to the parties to gainsay such a change; the only right thus interfered with being that of delaying or defeating justice; a right little worthy of respect (*a*).

When the legislature gave a new remedy for enforcing rights in the Admiralty, by the Admiralty Acts of 1840 and 1861, those Acts were held to extend to rights which had accrued before the new remedy had been provided (*b*). So, the Court of Chancery, which acquired jurisdiction under the 23 & 24 Vict. c. 35, to relieve in respect of the forfeiture of a lease in consequence of a breach of a covenant to insure, exercised this new jurisdiction where the breach occurred after, but the lease had been made before the Act was passed (*c*).

So, the provision of the Common Law Procedure Act of 1852, s. 128, that the plaintiff may issue execution within six years from the recovery of a judgment, without revival of the judgment, was held to apply to

Genl. *v.* Sillem, 10 HL. 704; 33 LJ. Ex. 227

(*a*) See, *ex. gr.* Cornish *v.* Hocking, 22 LJ. QB. 142; 1 E. & B. 602; Dash *v.* Van Kleek, 7 Johns. 503; The People *v.* Tibbetts, 4 Cowen, 392.

(*b*) The Alexander Larsen, 1 W. Rob. 288. See The Ironsides, Lush. 458; 31 LJ. PM. & A. 129.

(*c*) Page *v.* Bennett, 29 LJ. Ch. 398.

a judgment which had been recovered more than a year and a day before the Act was passed, and which therefore could not have been put in force under the previous state of the law without revival (*a*). The enactment 6 & 7 Vict. c. 73, s. 37, which made attorneys' bills taxable, for work done out of Court, and which also provided that, from the passing of the Act, no attorney should bring an action for costs until a month after he had delivered his bill, was held to apply to costs incurred before the passing of the Act (*b*).

On this principle, it was held that the 3 & 4 Will. 4, c. 42, s. 31, which provides that in actions brought by executors, the plaintiff shall be liable for costs, was held to apply to an action begun before the Act came into operation (*c*); and though Littledale J. (*d*), and afterwards Parke B. (*e*), disapproved of the decision, it appears to have been generally concurred in by the Courts (*f*). So, the Common Law Procedure Act of 1860, which deprives a plaintiff, in an action for a wrong, of costs, if he recovers by verdict less than five pounds, unless the judge certifies in his favour, was held to apply to actions begun before the Act had

(*a*) Boodle *v.* Davis, 8 Ex. 351, 22 LJ. Ex. 69.

(*b*) Binns *v.* Hey, 1 Dowl. & L. 66; Brooks *v.* Bockett, 9 QB. 847; Scadding *v.* Eyles, id. 858.

(*c*) Freeman *v.* Moyes, 1 A. & E. 338; Pickup *v.* Wharton, 2 C. & M. 405; Grant *v.* Kemp, id. 636.

(*d*) 1 A. & E. 341.

(*e*) In Pinhorn *v.* Sonster, 21 LJ. Ex. 337.

(*f*) *Per* Channell B. in Wright *v.* Hale, 30 LJ. Ex. 43.

come into operation, but tried after (*a*); and a similar effect was given to the County Courts Act of 1867, as regards giving security for costs (*b*).

But the new procedure would be presumedly inapplicable, where its application would involve a breach of faith between the parties. For this reason, those provisions of the Common Law Procedure Act of 1854 which permit error to be brought on a judgment upon a special case, and give an appeal upon a point reserved at the trial, were held not to apply where the special case was agreed to, and the point was reserved before the Act came into operation (*c*). Where a special demurrer stood for argument before the passing of the first Common Law Procedure Act, it was held that the judgment was not to be affected by that Act, which abolished special demurrers, but must be governed by the earlier law (*d*). The judgment was, in strictness, due before the Act, and the delay of the Court ought not to affect it.

SECTION V.—BENEFICIAL CONSTRUCTION.

Two principles are laid down as regards the spirit

(*a*) Wright *v.* Hale, 6 H. & N. 227; 30 LJ. Ex. 40.

(*b*) Kimbray *v.* Draper, LR. 3 QB. 160. See another instance in Watton *v.* Watton, LR. 1 P. & D. 227.

(*c*) Hughes *v.* Lumley, 24 LJ. QB. 29; 4 E. & B. 274. Vansittart *v.* Taylor, 4 E. & B; 910; 24 LJ. QB. 198.

(*d*) Pinhorn *v.* Sonster, 21 LJ. Ex. 336; 8 Ex. 138. See also R. *v.* Crowan, 14 QB. 221.

in which Statutes are to be interpreted; one, that remedial Statutes, and those which concern the public good, are to be construed liberally and beneficially, so as to promote as completely as possible the suppression of the mischief intended to be remedied, and to give life and strength to the remedy; the other that penal and some other Statutes are to be construed strictly (*a*).

What is meant by a beneficial construction in its widest sense, has been in some measure shown in the preceding chapters. It implies that the language is to be construed not only according to the rules of grammar, but under the influence of certain general presumptions as to the manner in which it is generally used, and as to the intentions of the Legislature. The meaning of the words is found not so much in a strict grammatical or etymological propriety of language, nor even in their popular use, as in the subject, or in the occasion on which they are used, and the object intended to be attained (*b*); and it is considered more likely that the legislature expresses itself faultily and inadequately, than that it intends certain consequences which it is presumed not to desire. The intention of the Statute being thus determined, it is construed, when it is of a remedial nature, in such a manner as to extend the benefit of its objects, and especially

(*a*) Bac. Ab. Statute I. 7, 8, 9.

(*b*) *Per* Cur. in R. *v.* Hall, 1 B. & C. 136; Grot. de B. & P. b. 2, s. 16; Puff. LN. b. 5, c. 12, s. 3.

of its main object, as extensively and effectually as possible.

The simplest illustration of this principle is found where the benefit of the Act is extended by giving the widest meaning to a word. Thus, a fishing-boat of ten tons provided with masts, which unshipped, and sails, used for going to sea, but which was propelled by four oars in harbour and shallow water, was held to be "a ship" within the 33rd section of the Merchant Shipping Act of 1862, which provides that when a collision between two "ships" takes place, the master of each ship is bound to render assistance to the other, on pain of the cancellation or suspension of his certificate. Though the Merchant Shipping Act, 1854, s. 2, enacted that the term "ship" should "have the meaning" thereby "assigned" to it, viz., that it should "include every description of vessel used in navigation not propelled by oars," this was considered not to be a definition, and as not excluding vessels which it did not include (*a*).

The beneficial spirit of construction is also well illustrated by cases where there is so far a conflict between the general enactment and some of its subsidiary provisions, that the former would be limited in the scope of its operation if the latter were not restricted. An Act which, after authorising the imposition of a local rate on all occupiers of land in a

(*a*) In *r* Fergusson, LR. 6 QB. 280.

parish, gives a dissatisfied ratepayer an appeal, but at the same time requires the appellant to enter into recognizances to prosecute the appeal, presents such a conflict. Either it excludes corporations from the right of appeal, because a corporation is incapable of entering into recognizances; or it extends the right to them, without compliance with that special exigency. And the latter would be unquestionably the beneficial way of interpreting the Statute. The general and paramount object of the Act would receive full effect by giving to corporate bodies the same right of appeal against the burthen imposed on them; and the subsidiary provision would be understood as applicable only to those who were capable of entering into recognizances (*a*).

The Mortmain Act, which prohibits the disposition of lands to a charity by other means than by a deed executed a year before the donor's death, was open to the construction that it applied only to lands which passed by deed, and therefore not to lands of copyhold tenure (*b*). But as the object of the Statute was, manifestly, to include all lands of whatever tenure in its prohibition, the only consequence that would have followed, if it had been thought impossible that the mode of conveyance provided by the Statute should operate to transfer copyholds, would have been that copyholds would have fallen within the general prohi-

(*a*) Cortis *v.* Kent Waterworks, 7 B. & C. 314.

(*b*) Comp. Smith *v.* Adams, *sup.* p. 26.

bition absolutely, and would have been incapable of passing to a charity by any mode of conveyance (*a*).

The Carrier's Act, 1 Wm. 4, c. 68, which enacts that a carrier shall not be responsible for the loss of articles delivered for carriage, unless the sender declares their value and nature, at the time of delivery, "at the office" of the carrier, was held to protect the carrier, where the parcel had been delivered to his servant elsewhere than at the office, and no declaration had been made either there or elsewhere; the fair meaning of the Statute, and the first object of the Legislature being that the carrier should in every case be apprised of the nature and value of the article entrusted to him, whether it was delivered at the office or elsewhere (*b*).

Sometimes the governing principle of the remedial enactment has been extended to cases not included in its language, to prevent a failure of justice, and consequently of the probable intention. Thus the Common Law Procedure Act of 1854, s. 50, which empowers a Court, upon the application of either party to a cause, supported by the affidavit of such party, of his belief that a material document is in the possession of his opponent, to order its production, though it does not admit the affidavit of the attorney of the

(*a*) *Per* Lord Tenterden in Doe *v.* Waterton, 3 B. & A. 151. See Churchill *v.* Crease, 5 Bing. 77, *per* Best C. J.

(*b*) Baxendale *v.* Hart, 21 LJ. Ex. 123, 6 Ex. 769; *per* Cam. Scac., reversing the judgment of the Exchequer.

party, even when the latter is abroad (*a*), would be satisfied by the attorney's affidavit, where the party was a corporation, and consequently incapable of making an affidavit, or, perhaps, of forming a belief (*b*). The governing principle was that all suitors should have power of getting discovery (*c*), and as a corporation could make no affidavit, or could make one only by their attorney, the affidavit of the latter was considered a substantial compliance with the Act.

When an Irish Statute, after giving to tenants for lives, or for more than fourteen years, the right of felling any trees which they had planted, but required that "the tenant so planting" them should file an affidavit within twelve months, in a form given by the Act, which purported throughout to be made by the tenant personally; the House of Lords construed the Act as satisfied by the affidavit of the tenant's agent. A stricter construction, it was said, would have rendered the Act inapplicable to most of the cases which it had in view (*d*).

In the same spirit, the burthen imposed, in general terms, by an Act, has been held not to apply to cases not falling under its governing principle. Thus, where an Act (16 & 17 Vict. c. 30), after enacting

(*a*) Christopherson *v.* Lotinga, 15 CB. NS. 809; Herschfield *v.* Clarke, 11 Ex. 712, 25 LJ. Ex. 113.

(*b*) Kingsford *v.* G. W. R. Co., 16 CB. NS. 761, 33 LJ. CP. 307.

(*c*) *Per* Erle C. J. Id.

(*d*) Mountcashel *v.* O'Neil, 5 HL. 937.

that no indictment except one against a corporation (which could not appear by attorney in the Court in which the indictment was preferred), should be removed into the Queen's Bench, went on, after reciting that it was expedient to make provision for preventing the vexatious removals of indictments into the Queen's Bench, to require that "whenever any such writ of certiorari" to remove one, "shall be awarded at the instance of the prosecutor," he should enter into a recognizance to pay the costs of the other side, if the latter should prove successful; providing, further, that if the recognizance was not entered into, the indictment should be tried in the Court below; it was held that a prosecutor who removed an indictment against a corporate body unable to appear in the Inferior Court, was not affected by this enactment, and not bound to enter into any recognizance. In such a case, the removal of the indictment was a matter of necessity, not option, for it could not be tried by the Inferior Court, since the defendant could not appear there; and it would be unjust to extend the provision to a case clearly beyond the scope of the Act; which, the preamble showed, was only to check vexatious removals (*a*).

(*a*) R. *v.* Manchester, 7 E. & B. 453, 26 LJ. MC. 65.

CHAPTER IX.

SECTION I.—MODIFICATION OF THE LANGUAGE TO MEET THE INTENTION.

WHERE the language of a statute, in its plain and unequivocal meaning and ordinary grammatical construction, has led to a manifest contradiction of the apparent purpose of the enactment, or to some palpable and evident absurdity or injustice, presumably not intended, a construction has been sometimes put upon it, which modified the meaning of the words, and even the structure of the sentence (*a*). Sometimes an unusual meaning has been given to particular words; sometimes their collocation has been altered, or their effect has been overlooked, or other words have been interpolated; under the influence, no doubt, of an irresistible conviction, that the Legislature could not possibly have intended what its words signify, and that the modifications thus made were mere corrections of careless language, and really gave the true intention.

(*a*) See *per* Alderson B. in Atty.-Genl. *v.* Lockwood, 9 M. & W. 398; *per* Parke B. in Becke *v.* Smith, 2 M. & W. 195.

Thus, where a local Act regulated the payment of a water-rate by a per centage on the "yearly rent" of the houses rated, it was understood to mean their yearly value; for if the rate had been proportioned to the sum payable to the landlord, irrespectively of whether he paid the rates and kept the premises in repair, it would have been unequal and unjust in a manner which it was in the highest degree improbable that the Legislature intended (*a*).

In a case already mentioned (*b*), where a colonial ordinance, passed to give effect to the treaty between this country and China, authorised the extradition to the Chinese government of any of its subjects charged with having committed "any crime or offence "against the laws of China," the Privy Council construed these words as limited to those crimes and offences which are punishable by the laws of all civilized nations; and as not including acts, which though "against the laws of China," would be innocent in Europe (*c*). As the literal meaning of the words was wide enough to include political offences against the law of a foreign State, an English Court might well think it impossible that they could have been used in that sense. It may be doubted, however, whether the other party to the treaty understood our stipulation in the same narrow sense; or, indeed,

(*a*) Sheffield Waterworks Co. *v.* Bennett, LR. 7 Ex. 409.

(*b*) P. 21.

(*c*) Atty.-Genl. *v.* Kwok Ah Sing, LR. 5 PC. 197.

whether it did not understand it as including, above all others, those crimes which all governments are most desirous to punish, viz., those against themselves (*a*). When it was settled that the Statute of Limitations, 21 Jac. 1, c. 16, applied to India (*b*), it was necessary to construe, for that purpose, the expression "beyond the seas," as meaning out of the territories (*c*).

An Act which made it penal "to be in possession of game after the last day" allowed for shooting, would, if construed literally, include cases where the possession had begun before the last day, and therefore lawfully; and to avoid this injustice, it was construed as applying only where the possession did not begin until after the close of the season; that is, the words "to begin" were interpolated before "to be in possession" (*d*). The Insolvent Act, which invalidated voluntary conveyances made by insolvents "within three months before the commencement of the imprisonment," which, literally, would exclude the time of imprisonment, was construed as if the words had been "within a period commencing three months before the imprisonment." The literal construction, in leaving uninvalidated voluntary conveyances made after the imprisonment had begun, would have led

(*a*) The same expressions are used in the 34 Vict. c. 8, and in the 37 & 38 Vict. c. 38.

(*b*) E. I. Co. *v.* Paul, 7 Moo. 85.

(*c*) Ruckmaboye *v.* Lullooboy, 8 Moo. 4.

(*d*) Unwin *v.* Simpson, 3 B. & Ad. 134.

to an incongruity which the Legislature could not be supposed to have intended (*a*).

So, it is obvious that when a statute purports to give protection from legal proceedings for acts done "by virtue," or "in pursuance" of its authority, it does not mean what its words, in their plain and unequivocal sense, convey; since an act done in accordance with law is not unlawful, and therefore needs no such protection (*b*). Such provisions have consequently received a meaning, which has been settled only gradually and by a long course of decisions, and which can be expressed only by a paraphrase departing considerably from the literal meaning of the language (*c*).

An Act (26 & 27 Vict. c. 29) which enacted that no witness before an election inquiry should be excused from answering self-criminating questions relating to corrupt practices at the election under inquiry, and entitled him, when he answered every question relating to those matters, to a certificate of indemnity declaring that he had answered all such criminating questions, was held to apply only where the witness answered "truly in the opinion of the "commissioners"; for it was not to be supposed that any answer, however false or contemptuous, was equally intended (*d*). It is observable that this inter-

(*a*) Becke *v.* Smith, 2 M. & W. 198.

(*b*) *Per* Cur. in Hughes *v.* Buckland, 15 M. & W. 346.

(*c*) Sup. p. 173.

(*d*) R. *v.* Hulme, LR. 5 QB. 377. 34 LJ. P. M. & A. 76.

polation was made in the Act, notwithstanding that it repealed an earlier enactment which protected the witness only when he made "true" discovery.

The 374th section of the Merchant Shipping Act, 1854, which enacts that no license granted by the Trinity House to pilots "shall continue in force beyond "the 31st of January," after its date, but that "the "same may be renewed on such 31st of January in "every year, or any subsequent day," was construed by the Privy Council as meaning, not that the renewed licenses must be issued on or after that day, but that they should take effect from the 31st of January. This departure from the strict letter was justified by the great inconvenience which would have resulted from a rigid adherence to it, since it would have left the whole district for a certain period, probably days, possibly weeks, without qualified pilots (*a*).

In the 7th section of the Railway and Canal Traffic Act of 1854, which enacts that railway and canal companies shall be liable for the loss or any injury done to "any horses, cattle, or other animals" (which would include a dog), entrusted to them for carriage, with the proviso that no greater damages should be recovered for the loss of, or injury done to "any of such animals" beyond the sums thereinafter mentioned,—specifying certain sums for horses, neat cattle, sheep and pigs, but making no mention of dogs,—the proviso was read, in order to reconcile it

(*a*) The Beta, 3 Moo. NS. 23.

with the enacting part, as dealing only with "any *of* "*the following* of such animals" (*a*). Where a railway company was made liable to make good the deficiency in the parochial rates arising from their having taken rateable property, "until its works were completed "and liable to assessment," the House of Lords held that the intention was that the liability should cease as regards any one parish, as soon as that portion of the line which ran through it was completed; in other words, that the Act was to be read as fixing the liability when "its works *in the parish* were com- "pleted" (*b*).

A recent case in the Queen's Bench may be cited as furnishing a remarkable example of judicial modification for the purpose of supplying an apparent case of omission, and avoiding an injustice and absurdity, such as the Legislature was presumed not to have intended. Under the 11 & 12 Vict. c. 110, an insolvent prisoner for debt might be discharged from imprisonment, either upon his own petition, or upon the petition of any of his creditors. The 10 & 11 Vict. c. 102, in abolishing the circuits of the Insolvent Commissioners, and transferring their jurisdiction to the County Courts, provided that "if an insolvent petitions,"

(*a*) Harrison *v.* London and Brighton R. Co., 29 LJ. QB. 209, 2 B. & S. 122; reversed on another point, Id., and 31 LJ. QB. 113. See another instance of interpolation in Perry *v.* Skinner, 2 M. & W. 471, sup. p. 195.

(*b*) East London R. Co. *v.* Whitechurch, LR. 7 HL. 89, sup. p. 14.

the Insolvent Court should refer his petition to the Court of the district where he was imprisoned; but it omitted all mention of cases where the petitioner was a creditor. The Court, however, considered that an intention to include the latter sufficiently appeared. To confine the section to its literal meaning would involve the unjust result that, though a vesting order might be made, and the debtor be deprived of his property, he would remain imprisoned. The words "if "an insolvent petitions" were accordingly understood to have merely put that case as an example of the more general intention, viz., "if a petition be presented." For the purposes of the Legislature it was immaterial whether the petition was the insolvent's or the creditor's (*a*).

An Act (25 & 26 Vict. c. 114) which authorised constables to search any person whom they suspected of coming from any land in unlawful pursuit of game, and, if any game was found upon him, to detain and summon him, was held to authorise a constable to summon a man whom he saw on a footway, with a gun in his hand, picking up a rabbit thrown from an adjoining enclosure, just after the report of a gun, but whom he did not search. There was nothing in the general object of the Act to lead to the supposition that "the "enormous absurdity" of requiring an actual bodily search under such circumstances was intended; and such

(*a*) Exp. Greenwood, 27 LJ. QB. 28.

a departure from the language of the Act was therefore considered as really meeting the true intention (*a*).

Where an Act authorised a conviction "on the oath "of one witness," and there was no rational ground for supposing that the Legislature required evidence when the offender confessed his guilt, the Act would be read as if those words had been omitted; and a conviction upon a confession, and without the evidence of any witness, would be good (*b*). The same modification would seem equally justifiable, even where two witnesses were required, as in charges against military and marine officers of quartering men contrary to the provisions of the Mutiny Acts, or of using compulsion on civil officers to make them neglect their duty or to act contrary to it. It would be different, of course, if there were solid reason for distrusting a confession, as in charges of military desertion, where the Act which required the evidence of witnesses would no doubt receive its strict construction; or where there were other adequate grounds for holding that the actual production of evidence was intended to be indispensable (*c*).

To carry out the intention of the Legislature, it is occasionally found necessary to read the conjunctions "or" and "and," one for the other. The Statute of

(*a*) Hall *v.* Knox, 4 B. & S. 515, 33 LJ. MC. 1; comp. Clarke *v.* Crowder, LR. 4 CP. 638. See also sup. 184.

(*b*) R. *v.* Gage, 1 Stra. 546.

(*c*) See ex. gr. R. *v.* Armitage, LR. 7 QB. 773, sup. 9.

Charitable Uses, for instance, which speaks of property which ought to be employed for the maintenance of "sick *and* maimed soldiers," referred to soldiers who were either the one "or" the other, and not only to those who were both (*a*).

The 1 Jac. 1, c. 15, which made it an act of bankruptcy for a trader to leave his dwelling-house "to "the intent, *or* whereby his creditors might be defeated "or delayed," if construed literally, would have exposed to bankruptcy every trader who left his home even for an hour, if a creditor called during his absence for payment. This absurd consequence was avoided, and the real intention of the Legislature beyond reasonable doubt effectuated, by reading "or" as "and"; so that an absence from home was an act of bankruptcy only when coupled with the design of delaying or defeating creditors (*b*).

The converse change was made in a turnpike Act which imposed one toll on every carriage drawn by four horses, and another on every horse, laden or not laden, but not drawing; and provided that not more than one toll should be demanded for repassing on the same day "with the same horses *and* carriages." It was held that the real intention of the Legislature required that this "and" should be read as "or," and that a carriage repassing with different horses was not liable to a second toll (*c*). The toll was imposed

(*a*) Duke, Charit. Uses, 134.

(*b*) Fowler *v.* Padget, 7 TR. 509.

(*c*) Waterhouse *v.* Keen, 6

on the carriage; and it was immaterial whether it was drawn by the same or different horses.

This substitution of conjunctions, however, has been sometimes made without sufficient reason. It may be questioned, for instance, whether the judges who "were at the making" of the Statute 2 Hen. 5, c. 3, which required that jurors to try an action when the debt "or" damages amounted to forty marks, should have land worth forty shillings, were justified in construing it "by equity," and converting the disjunctive "or" into "and" (*a*). The Court of Queen's Bench, on one occasion, held that the power given to justices by the Highway Act, 5 & 6 Will. 4, c. 50, to order the diversion of a highway, when it appeared "nearer *or* more commodious to the public," was limited to cases where the new road was both nearer *and* more commodious (*b*); but the same Court lately held that the power was exercisable when the new road was either the one *or* the other (*c*).

When a statute confers an authority to do a judicial, or, indeed, any other act which the public interest or even individual right may demand, it is imperative on those so authorized, to exercise the authority when the case arises, and its exercise is duly applied for by a

Dowl. & R. 257, wrongly reported in the marginal note in 4 B. & C, 200.

(*a*) Co, Litt. 272a.

(*b*) R, *v*, Shiles, 1 QB. 919.

(*c*) R. *v*. Phillips, LR. 1 QB. 648; Wright *v*. Frant, 4 B. & S, 119, 32 LJ. MC. 204.

party interested and having a right to make the application (*a*). In giving one person the authority to do the act, the statute impliedly gives to others the right of requiring that the act shall be done; the power being given for the benefit, not of him who is invested with it, but of those for whom it is to be exercised (*b*). The legislature, in such cases, imposes a positive and absolute duty, and not merely gives a discretionary power; and it must be exercised upon proof of the particular facts out of which the power arises (*c*).

When, therefore, the language in which the authority is conferred is only directory, permissive, or enabling; for instance, when it is enacted that the person authorized "may," or "is empowered," or "shall, if he deems it advisable" (*d*), or that "it shall be lawful" for him to do the act, it has been so often decided as to have become an axiom, that such expressions have a compulsory force (*e*), unless there be special grounds for a different construction.

Thus, the statute which enacted that the chancellor "may" grant a commission of bankruptcy, made it imperative on him to grant it, when the occasion for it arose, on the application of a person interested (*f*).

(*a*) *Per* Cur. in McDougal *v.* Paterson, 2 L.M. & P., 687, 11 CB. 755.

(*b*) *Per* Cur. in The Supervisors *v.* U.S., 4 Wallace, 446.

(*c*) *Per* Cur. in McDougal *v.* Paterson, ubi sup.

(*d*) The Supervisors *v.* U,S. ubi sup.

(*e*) Per Cur. in R. *v.* Tithe Commissioners, 14 QB. 474.

(*f*) Backwell's case, 1 Vern.

The same construction was put upon the 13 & 14 Car. 2, c. 12, which enacted that the constables, with the churchwardens and overseers, "shall have power and "authority" to make a rate and reimburse the constables certain expenses. It was held to require the churchwardens and overseers to concur in making a rate (*a*). So, an Act which empowered a vestry to make a paving rate, and provided that when it appeared to the vestry that the rate was not incurred for the equal benefit of the whole parish, it "might" exempt the parts not benefited, was held to impose on them the duty, and not merely to confer the power of apportioning the burden (*b*). So, a charter which granted to the steward and suitors of a manor "power "and authority" to hold a court, was held to make it obligatory on them to hold it when necessary (*c*).

Under the 5 & 6 W. 4, c. 5 4, s. 7, which enacts that if any agreement for the commutation of tithes, which was not of legal validity, should appear to the tithe commissioners fair, they "shall be em-"powered" to confirm it, the commissioners were held bound to confirm all agreements fulfilling those conditions (*d*). The 7 & 8 Vict. c. 110, which provided that a judgment creditor of a joint stock company who

152; 2 Ch. Ca. 190, 1 Eq. Ca. Ab. 52.

(*a*) R. *v.* Barlow, 2 Salk. 609.

(*b*) Howell *v.* London Dock Co., 8 E. & B. 212, 27 LJ. MC. 177.

(*c*) R. *v.* Havering atte Bower, 5 B. & A. 691, R. *v.* Hastings, Id. 692 n.

(*d*) R. *v.* Tithe Commissioners, 14 QB. 474.

failed, after due diligence, to obtain satisfaction of his judgment by execution against the property of the company, might have execution against any of its shareholders, or former shareholders, on application to and by leave of the Court, to which "it should be "lawful" to grant or refuse the application, or "make "such order as it might see fit," was held to leave to the Court no discretion to refuse the application when satisfied that the debt was still due (*a*), and that proper endeavours had been made to put in force the execution against the company (*b*); unless, indeed, it appeared that the creditor had in any way disentitled himself to execution against the creditor (*c*).

Under some circumstances, indeed, it would be competent to the Court to inquire into the validity of the judgment which they were called upon to enforce. Thus, under the 1 W. 4, c. 73, s. 3, which enacted that if a plaintiff in an action of libel against the editor of a newspaper, should make it appear to the Court of Exchequer that he was entitled to execution upon a judgment obtained against the defendant, but that he had been unable to procure satisfaction by execution against his goods, it "should be lawful" for that Court, for the benefit of the plaintiff, to order pro-

(*a*) Hill *v.* London Ass. Co., 1 H. & N. 398.

(*b*) Morisse *v.* Royal British Bank, 1 CB. NS. 67. Comp., however, Shrimpton *v.* Sidmouth, &c., R. Co., LR. 3 CP 80, decided on the 8 Vict. c. 16.

(*c*) Scott *v.* Uxbridge, &c., R. Co., LR. 1 CP. 596.

ceedings against the sureties of the editor; it was held that the Court had a discretion to grant or to refuse the order; and, in exercising it, was entitled to inquire into the validity of the judgment, as well as of the plaintiff's right to execution (*a*).

It was once thought that this construction of permissive words applied to an Act which, declaring that the construction of a railway would be for the public advantage, enacted that "it shall be lawful" for a company to make it, and to take lands compulsorily for the purpose; and it was accordingly held that the permission to make the railway imposed on the company the obligation of completing it. But this decision was reversed. The permissive words were read in their popular sense. They gave conditional powers which, if acted upon, carried with them duties; but if not, were not imperative on the company to which the power had been granted (*b*).

Special considerations, however, may show that the empowering words, when permissive, were intended to leave a discretion in the exercise of the power. Thus, the Church Discipline Act, which enacts that in every case of a clergyman charged with an ecclesiastical offence, or concerning whom a scandal may exist of having committed such an offence, "it shall be lawful"

(*a*) Jones *v.* Young, 32 LJ. Ex. 254, 2 H. & C. 270.

(*b*) York & North Midland R. Co. *v.* R. 1 E. & B. 858, 22 LJ. QB. 225; Great Western R. Co. *v.* R., 1 E. & B. 874. See also Nicholl *v.* Allen, 1 B. & S. 934, 31 LJ. QB. 283.

for the bishop, on the application of any party complaining, or if he thinks fit, on his own mere motion, to issue a commission of inquiry; notice of the intention to issue it, containing a statement of the charge and the name of the accuser being first sent to the accused; was held to leave it altogether to the judicial discretion of the bishop whether he would issue a commission or not. The permissive words could not receive one construction when applying to a complaint of an offence, and another when referring to one of mere scandal and evil report; and the Legislature could hardly have intended to make the issue of the commission imperative in the latter case, if the bishop thought it was founded on the mere gossip of fanciful and over zealous persons (*a*).

The 64th section of the Common Law Procedure Act, 1852, which provides that if the garnishee disputes his liability, the judge, instead of ordering execution, "may" order that the judgment creditor shall be at liberty to proceed against the garnishee by writ, calling on him to show cause why execution should not issue against him, was held to leave it to the discretion of the judge whether to allow the writ or not (*b*). The 40th section of the same Act, which provides that in any action by a man and his wife for an injury done to the wife, "it shall be lawful" for the former to add claims in his own right, and authorizes the Court

(*a*) R. *v.* Chichester (Bp.), 2 E. & E. 209, 29 LJ. QB. 23.

(*b*) Wise *v.* Birkenshaw, 29 LJ. Ex. 241.

to consolidate separate actions for such claims if it thinks fit, was also held to leave it optional to add such claims (*a*). But in an earlier decision, it was held that the 8 & 9 W. 3, c. 11, s. 8, which provides that in actions for a penal sum the plaintiff "may" assign breaches, made such assignments imperative. It was observed that the statute was highly remedial, giving the plaintiff relief to the extent of the damage sustained, and protecting the defendant from having to pay more unless he took proceedings in equity; and the plaintiff had no right to refuse to proceed in accordance with its provisions (*b*).

Under the 43 Geo. 3, c. 59, which enacted that where a county bridge is narrow, "it shall and may "be lawful" for the Quarter Sessions to order it to be widened; it was held that, having regard to the nature of the Court entrusted with the power, and to the subject matter, which might involve other considerations besides the width of the bridge, such as the expense, and the persons to be benefited, the words were not mandatory but discretionary (*c*). So, the 32 & 33 Vict. c. 40, which enacts that every rating authority "may" exempt Sunday schools, was held discretionary and not mandatory (*d*).

(*a*) Brookbank *v.* The Whitehaven R. Co., 31 LJ. Ex. 349, 7 H. & N. 834.

(*b*) Roles *v.* Rosewell and Hardy *v.* Bern, 5 TR. 538 and 636; not cited in Brookbank *v.* The Whitehaven R. Company.

(*c*) *Re* Newport Birdge, 29 LJ. MC. 52, 2 E. & E. 377.

(*d*) Bell *v.* Crane, LR. 8 QB. 481.

In enactments which are construed beneficially, as distinguished from strictly, an omission may be supplied, where the context furnishes solid grounds for inferring that what is supplied is what the Legislature intended. Thus, when the 33rd section of the Fines and Recoveries Act (3 & 4 Wm. 4, c. 74), in providing that if the protector of a settlement should be (1) a lunatic, or (2) convicted of felony, or (3) an infant, the Court of Chancery should be the protector in lieu of the lunatic or the infant, omitted the case of the convict of felony, it was held by Lord Lyndhurst that the omission might be supplied, in order to give effect to the manifest intention. Without it, the mention of the case of felony, in the first part of the sentence, was insensible, and it necessarily implied the missing words (*a*).

So, where a statute enacted that suits "against" an association should be brought in the district where it was established, without making any provision for suits "by" the association; but an earlier Act had in a similar clause provided for suits both by and against; the Supreme Court of the United States held that the omission in the later Act was accidental, and might be supplied (*b*). In statutes governed by the principle of strict construction, such emendations would not be made (*c*).

(*a*) *Re* Wainwright, 1 Phil. 258. See also Spyve *v.* Topham, 3 East, 115; Dent *v.* Clayton, 33 LJ. Ch. 503.

(*b*) Kennedy *v.* Gibson, 8 Wallace, 491.

(*c*) See Underhill *v.* Longridge, 29 LJ. MC. 65.

It has been contended that no modification of the language of a statute is ever allowable in construction, except to avoid an absurdity which appears to be so, not to the mind of the expositor merely, but to that of the Legislature; that is, when it takes the form of a repugnancy (*a*). In this case, the Legislature shows, in one passage, that it did not mean what its words signify in another; and a modification is therefore called for, and sanctioned beforehand, as it were, by the author. But the authorities do not appear to support this restricted view. They would seem, rather, to establish that the judicial interpreter may deal with careless and inaccurate words and phrases in the same spirit as a critic deals with an obscure or corrupt text. He must be satisfied, however, on solid and legitimate grounds, that the language thus treated does not really express the intention, and that his amendment does.

SECTION II.—EQUITABLE CONSTRUCTION.

The practice of modifying the language, and controlling the application of enactments, however, was formerly carried to still greater lengths. It was laid down that a remedial statute should receive an equitable construction; so that cases out of its letter should,

(*a*) *Per* Willes J. in Motteram *v.* E. C. R. Co., 7 CB. NS. 558, 29 LJ. MC. 64; Christopherson *v.* Lotinga, 15 CB. NS. 809; 33 LJ. CP. 371; *per* Brett J. in Boon *v.* Howard, LR. 9 CP. 305.

if within the general object or mischief of the Act, be brought within the remedy which it provides (*a*).

Equity, said Lord Mansfield, is synonymous with the intention of the Legislature (*b*); and in this sense, an equitable construction would be free from objection. The "equitable" construction, which included uses within the Statute *De donis*, though that enactment spoke only of "lands and tenements," and may have originally contemplated only common law estates (*c*); and which applied the 2 Hen. 5, requiring that a juror should have "lands" worth forty shillings, to the *cestui que* use, and not to the feoffee, when the legal estate was in the latter (*d*); would seem to fall within the ordinary rules of construction. The 4 Ed. 3, c. 7, which gave executors an action against trespassers for a wrong done to their testator, was said to have given them also an action on the case, by "the equity" of the statute (*e*); but the decision was strictly on the letter of the Act. It turned on the construction of the word "trespass," which was held to mean a wrong done generally, and "trespassers," to mean wrong-doers (*f*). The decision that the Statute of Gloucester, c. 5 (which gives the action of waste against lessees for life, or "for years,"

(*a*) Co. Litt. 24 b.; Bac. Ab. Statute I. 6; Com. Dig. Parliament, R. 13.

(*b*) R. *v.* Williams, 1 W. Bl. 95.

(*c*) Corbet's Case, 1 Rep. 88.

(*d*) Co. Litt. 272 b.

(*e*) Russell *v.* Prat, Leon. 194.

(*f*) *Per* Lord Ellenborough in Knubley *v.* Wilson, 7 East, 135.

to recover the wasted place and treble damages), reached "by equity" a tenant for one year and even for half a year, was apparently of a similar character (*a*). So, when it is said that it is on "the equity," or "equitable construction" of the Statute 2 W. & M. c. 5,—which empowers a landlord to sell for the best price the goods which he has distrained for arrears of rent, if the tenant does not "replevy" in five days,—that an action lies against the landlord who sells before the expiration of five days, though after impounding (*b*), or after a tender of the rent and expenses within that time (*c*); no more seems to have been intended than that a cause of action was given by implication (*d*) against the landlord who thus abused the power of sale thereby conferred on him.

But the expression has been more generally used in other senses. In the construction of old statutes, it has been understood as extending to general cases the application of an enactment which, literally, was limited to a special case. Thus, the 4th chapter of the Stat. Westminster 1 (3 Ed. 3), which enacted that a vessel should not be adjudged a wreck, if a man, a dog, or a cat escaped from it, was regarded as exempting a vessel from such adjudication, by an equitable construction, if any other animal escaped; those named being put only for example (*e*). The 46th chapter of the

(*a*) Co. Litt. 53a; 2 Inst. 302.
(*b*) Wallace *v.* King, 1 H. Bl. 13.
(*c*) Johnson *v.* Upham, 2 E. & E. 250, 28 LJ. QB. 252.
(*d*) See Chapter XII. s. 2.
(*e*) 2 Inst. 167, 5 Rep. 107.

same statute, which directed the judges of the King's Bench to hear their causes in due order, was extended, on the same principle, to the judges of the other courts (*a*): and the Stat. Westm. 2, c. 31, which gave the bill of exceptions to the ruling of the judges of the Common Pleas, was similarly held applicable, not only to the other judges of the Superior Courts, but to those of the County Courts, the Hundred, and the Courts Baron; their judges being still more likely to err (*b*). The 5 Hen. 4, c. 10, which forbade justices of the peace to commit to any other than the common jail, was held to be equally imperative on all other judicial functionaries (*c*). The Statute of Rich. 2, which forbade the Warden of the Fleet to suffer his prisoners for judgment debts to go at large, until they had satisfied their debts, was held to include all jailors (*d*). The Statute of Gloucester (6 Ed. 1), c. 11, in speaking of London, was considered as intending to include all cities and boroughs equally; the capital having been named alone for excellency (*e*). The statute, or writ of *circumspecte agatis*, 13 Ed. 1, which directs the judges not to interfere with the Bishop of Norwich or his clergy in spiritual suits, was construed as protecting all other prelates and ecclesiastics; the Bishop of Norwich being put but for an example (*f*).

(*a*) 2 Inst. 256.

(*b*) 2 Inst. 426; Strother *v.* Hutchinson, 4 Bing. NC. 83.

(*c*) 2 Inst. 43.

(*d*) Platt *v.* Lock, Plowd. 35.

(*e*) 2 Inst. 322.

(*f*) 2 Inst. 487.

This kind of construction, which would not be tolerated now (*a*), was said to have been given to ancient statutes in consequence of the conciseness with which they were drawn (*b*); though the specific expressions used can hardly be said to be more concise than the more abstract terms for which they were, possibly, substituted. It has been explained, also, on the ground that language was used with no great precision in early times, and that Acts were framed in harmony with the lax method of interpretation contemporaneously prevalent (*c*). It has also been accounted for by the fact that in those times the dividing line between the legislative and judicial functions was feebly drawn, and the importance of the separation imperfectly understood (*d*). The ancient practice of having the statutes drawn by the judges from the petitions of the Commons and the answers of the King (*e*), may also contribute to account for the wide latitude of their interpretation. The judges would naturally be disposed to construe the language in which they framed them, as their own, and therefore with freedom and indulgence.

But an equitable construction has been applied also to more modern statutes, and in a sense departing still

(*a*) *Per* Pollock C. B. in Miller *v.* Salomons, 21 LJ. Ex. 197, 7 Ex. 475.

(*b*) 2 Inst. 401; *per* Lord Brougham in Gwynne *v.* Burnell, 6 Bing. NC. 561.

(*c*) *Per* Lord Ellenborough in Wilson *v.* Knubley, 7 East, 134.

(*d*) Sedg. Interp. Stat. 311.

(*e*) Co. Litt. 272 a, sup. 33.

more widely from the language. Thus, although the 3rd section of the 21 Jac. c. 16, enacted that certain actions should be brought within six years after the cause of action accrued, "and not after," it was nevertheless held, notwithstanding the negative terms just quoted, that where an action was brought within six years, but abated by the death of either party, a reasonable time—that is, a year, computed, not from the death, but from the grant of administration—was, by an equitable construction of the statute, to be granted, beyond the period given, to bring a fresh action by or against the personal representatives of the deceased (*a*).

The provision of the Statute of Frauds, which prohibits the enforcement of agreements for the purchase of lands, unless they be in writing, was held not to prevent the Court of Chancery from decreeing the specific performance of such agreements, though not in writing, where they had been partly performed. On all questions on that statute, it was said, the end and purport for which it was made, namely, to prevent frauds and perjuries, was to be considered; and any agreement in which there was no danger of either, was considered as out of the statute (*b*). The statute was not made to cover fraud (*c*); and as it would be a fraud on one of the parties, if a partly performed contract were not

(*a*) Hodsden *v.* Harridge, 2 Wms. Saund. 64 a; Curlewis *v.* Mornington, 7 E. & B. 283, 27 LJ. QB. 439. See also Piggott *v.* Rush, 4 A. & E. 912.

(*b*) *Per* Lord Hardwicke in Atty.-Genl. *v.* Day, 1 Ves. 221.

(*c*) *Per* Turner L. J. in Lin-

completely performed, the Court of Chancery compelled its performance in contradiction to the positive enactment of the statute (*a*). This doctrine, however, was not accepted by the courts of common law (*b*).

Similar considerations affected the construction which was put upon the Register Act, 7 Anne, c. 28, which, after reciting that frauds were committed by means of secret conveyances, enacted that deeds and wills affecting lands, either at law or in equity, should be adjudged fraudulent and void against subsequent purchasers, unless a memorial of them were registered. It was nevertheless held that such instruments, though unregistered, were valid against subsequent purchasers who had notice of them (*c*). It has been doubted whether the efficacy of the Act was not materially impaired by such a departure from its letter (*d*).

On similar grounds, it would seem, although the various Acts of Parliament which created stocks since

coln *v.* Wright, 28 LJ. Ch. 705; Haigh *v.* Kaye, LR. 7 Ch. 474.

(*a*) *Per* Lord Redesdale in Bond *v.* Hopkins, 1 Sch. & Lef. 433. See also Atty.-Genl. *v.* Day, 1 Ves. 221; Lester *v.* Foxcroft, 1 Colles, 108, and Tudor's Eq. Ca., where the later authorities are collected; 2 Story Eq. Jur. s. 752 *et seq.*; Webster *v.* Webster, 27 LJ. Ch. 115; Nunn *v.* Fabian, LR. 1 Ch. 35.

(*b*) Boydell *v.* Drummond, 11 East, 142, 159; Cocking *v.* Ward, 1 CB. 858.

(*c*) Le Neve *v.* Le Neve, Amb. 436; Davis *v.* Strathmore, 16 Ves. 419; Willis *v.* Brown, 10 Sim. 127.

(*d*) *Per* Sir W. Grant in Wyatt *v.* Barwell, 19 Ves. 439; and see Doe *v.* Alsop, 5 B. & A. 142.

the beginning of the reign of George I., provided that no method of assigning or transferring the stock, except that provided by the Act, should be valid or available in law, and directed that the owner of stock might devise it by will, attested by two witnesses, it was established by repeated decisions that, notwithstanding such express terms, stock might be disposed of by an unattested will; it being held that, if not valid as a devise, the will nevertheless bound the executor as a direction for the disposition of the stock (*a*).

This principle of equitable construction has, however, fallen into discredit. It was condemned, indeed, by Lord Bacon, who declared that non est interpretatio, sed divinatio, quæ recedit a literâ (*b*); Lord Tenterden lamented it (*c*), and pronounced it dangerous (*d*); and it may now be considered as altogether discarded as regards the construction of modern statutes, except those which are strictly (*e*) in pari materiâ with one which has already received an equitable construction; in which case the equitable construction is extended to the modern enactment, on the general principle mentioned in an earlier page, that they form together one body of law, and are to be construed together (*f*). Thus, the 3 & 4

(*a*) Ripley *v.* Waterworth, 7 Ves. 440; Franklin *v.* Bank of England, 1 Russ. 589.

(*b*) Adv. of Learning.

(*c*) R. *v.* Turvey, 2 B.&A. 522.

(*d*) Brandling *v.* Barrington, 6 B. & C. 475.

(*e*) Comp. Adam *v.* Inhabts. of Bristol 2 A. & E. 389.

(*f*) Sup. 25 et seq.

W. 4, c. 42, s. 3, which limits the time for bringing actions on bonds and other specialties to twenty years, in language identical with that used in the 21 Jac. c. 16, s. 3, respecting simple contract debts, received the same equitable construction as had been given to the last-named Act; and the administrator of the obligor of a bond which had been put in suit in 1831, in which year the action abated by the death of the obligor, was held to be liable to be sued in 1858, within a year from the grant of letters of administration (*a*).

It may not be out of place to mention here, that the expression "the equity of a statute" is sometimes used as meaning the principle or ground of a rule adopted from analogy to a statute. For instance, the 6 Rich. II., which provided that a writ should abate, if the declaration showed that the contract sued upon was made in a different county from that mentioned in the writ, is said to have led, by "the equity" of that statute, or the analogy which it furnished, to the introduction, by the judges, in the reign of James I., of the practice of changing the venue on motion, where there was no variance between the writ and declaration, as to the place where the cause of action arose (*b*).

(*a*) Sturgis *v.* Darrell, 4 H. & N. 622, 28 LJ. Ex. 366.

(*b*) Knight *v.* Farnaby, 2 Salk. 670; 1 Saund. 74 (2); Tidd Pr. c. 25.

It was formerly asserted that a statute contrary to natural equity or reason, such as one which made a man a judge in his own case, or contrary to Magna Charta, was void; for jures naturæ sunt immutabilia; they are leges legum; and an Act of Parliament can do no wrong (*a*). But such dicta cannot be supported. They stand as a warning, rather than as an authority to be followed (*b*).

The law on this subject cannot be better laid down than in the following words of a great American authority: 'It is a principle in the English law, that an Act of Parliament, delivered in clear and intelligible terms, cannot be questioned, or its authority controlled, in any court of justice. "It is," says Sir W. Blackstone, "the exercise of the highest authority that the king-"dom acknowledges upon earth." When it is said in the books, that a statute contrary to natural equity and reason, or repugnant, or impossible to be performed, is void, the cases are understood to mean that the Courts are to give the statute a reasonable construction. They will not readily presume, out of respect and duty to the lawgiver, that any very unjust or absurd consequence was within the contemplation of the law. But if it should happen to be too

(*a*) Bonham's Case, 8 Rep. 118a; City of London *v.* Wood, 12 Mod. 687; Day *v.* Savadge, Hob. 87; Mercers *v.* Bowker, 1 Stra. 639; 3 Inst. 111. So enacted as to Magna Charta by 42 Ed. 3, c. 1, Co. Litt. 81a.

(*b*) *Per* Willes J. in Lee *v.* Bude R. Co., LR. 6 CP. 582.

palpable in its direction to admit of but one construction, there is no doubt, in the English law, as to the binding efficacy of the statute. The will of the Legislature is the supreme law of the land, and demands perfect obedience.

'But while we admit this conclusion of the English law, we cannot but admire the intrepidity and powerful sense of justice which led Lord Coke, when Chief Justice of the King's Bench, to declare, as he did in Doctor Bonham's case, that the Common Law doth control Acts of Parliament, and adjudges them void when against common right and reason. The same sense of justice and freedom of opinion led Lord Chief Justice Hobart, in Day *v.* Savage, to insist that an Act of Parliament made against natural equity, as to make a man judge in his own case, was void; and induced Lord Chief Justice Holt to say, in the case of the City of London *v.* Wood, that the observation of Lord Coke was not extravagant, but was a very reasonable and true saying. Perhaps what Lord Coke said in his reports on this point, may have been one of the many things that King James alluded to, when he said that in Coke's reports there were many dangerous conceits of his own uttered for law, to the prejudice of the crown, parliament and subjects' (*a*).

(*a*) 1 Kent Comm. 447.

CHAPTER X.

SECTION I.—STRICT CONSTRUCTION—PENAL LAWS.

THE rule which requires that penal and some other statutes shall be construed strictly, seems to depend on the reasonable expectation that, when the Legislature intends so grave a matter as the infliction of suffering, or an encroachment on natural liberty or rights, or the grant of exceptional exemptions, powers, and privileges, it will not leave its intention to be gathered by mere doubtful inference, or convey it in "cloudy "and dark words" only (*a*), but will express it in terms reasonably plain and explicit. It does not require or justify that suspicious scrutiny of the words, or those hostile conclusions from their ambiguity or from what is left unexpressed, which characterise the judicial interpretation of affidavits in support of *ex parte* applications (*b*), or of magistrates' convictions, where the ambiguity goes to the jurisdiction (*c*). Nor does

(*a*) 4 Inst. 332.

(*b*) See ex. gr. Perks *v.* Severn, 7 East, 194; Fricke *v.* Poole, 9 B. & C. 543.

(*c*) See R. *v.* Davis, 5 B. & Ad. 551; R. *v.* Jones, 12 A. & E. 684; *per* Coleridge J. in R. *v.* Toke, 8 A. & E. 227; *per cur.*

it allow the imposition of a restricted meaning on the words, for the purpose of withdrawing from the operation of the statute a case which falls both within its scope and the fair sense of its language. This would be to defeat, not to promote, the object of the Legislature (*a*); to misread the statute and misunderstand its purpose (*b*); and no construction is admissible which would sanction an evasion of an Act (*c*). But it requires that the language shall be so construed, that no cases shall be held to fall within it, which do not fall both within the reasonable meaning of its terms and within the spirit and scope of the enactment (*d*). If the Legislature has not used words sufficiently comprehensive to include within its prohibition all the cases which fall within the mischief intended to be prevented, it is not competent to a Court to extend them (*e*). It is immaterial, for

in Lindsay *v.* Leigh, 11 QB. 465; and R. *v.* Stainforth, Id. 75; Fletcher *v.* Calthrop, 6 QB. 880.

(*a*) Bac. Ab. Stat. I. 9; R. *v.* Hodnett, 1 TR. 101.

(*b*) *Per* Martin B. in Nicholson *v.* Fields, 31 LJ. Ex. 236, 7 H. & N. 710, and Bramwell B. in Foley *v.* Fletcher, 3 H. & N. 781.

(*c*) *Per cur.* in U. S. *v.* Wiltberger, 5 Wheat. 95; U. S. *v.* Gooding, 12 Wheat. 460; American Fur Co. *v.* U. S., 2 Peters, 367; U. S. *v.* Coombs, 12 Peters, 80; U. S. *v.* Hartwell, 6 Wallace, 395.

(*d*) *Per* Best C. J. in Fletcher *v.* Sondes, 3 Bing. 580; Bracey's Case, 1 Salk. 348; R. *v.* Harvey, 1 Wils. 164; Dawes *v.* Painter, Freem. K.B. 175; Scott *v.* Paquet, LR. 1 PC. 552; Ellis *v.* M'Cormick, LR. 4 QB. 271.

(*e*) *Per* Lord Tenterden in Proctor *v.* Manwaring, 3 B. & A. 145.

this purpose, whether the proceeding prescribed for the enforcement of the penal law be criminal or civil (*a*).

The degree of strictness applied to the construction of a penal statute depends in great measure on the severity of the statute. When it merely imposes a pecuniary penalty, it would seem to be construed less strictly than where the rule is invoked in *favorem vitæ*. The principle was more rigorously applied in former times, when the number of capital offences was one hundred and sixty or more (*b*); when it was still punishable with death to cut down a cherry-tree in an orchard, or to be seen for a month in the company of gipsies (*c*). An indictment for the capital felony of assaulting a person at a certain time and place, and feloniously cutting or feloniously robbing him, was then fatally bad, because not alleging that the cutting or the robbing was done then and there; while a similar omission in an indictment for the misdemeanour of a common assault was considered immaterial (*d*). Lord Hale mentions that a statute of Edward 6, which made the stealing of horses, in the plural, a capital offence, gave rise to a doubt, which it was thought necessary to remove by enactment in the

(*a*) Henderson *v.* Sherborne, 2 M. & W. 236; Nicholson *v.* Fields, 7 H. & N. 810; The Bolina, 1 Gallison 83, *per* Story J.

(*b*) 4 Bl. Comm. 18. According to Sir S. Romilly, it was, in his time, two hundred and thirty.

(*c*) 4 Bl. Comm. 4.

(*d*) 2 Hale, 178, R. *v.* Bank, Cro. Jac. 41; R. *v.* Francis, 2 Stra. 1015.

following session of Parliament, whether it included the theft of one horse only; the doubt resting on the slender foundation, that an earlier Act spoke of stealing "any horse," in the singular number (*a*). Perhaps the same spirit may be found in the more modern decisions, that an enactment which made it felony to "stab, cut, or wound," did not reach the case of biting off a nose or a finger, because the injury thus inflicted was not caused by an instrument (*b*); nor that of breaking a collar-bone, when the skin was not broken (*c*).

A strict construction requires, at least, that no case shall fall within a penal statute which does not comprise all the elements which, whether material or not, morally, are in fact made to constitute the offence as defined by the statute. Thus, the Coventry Act, 22 & 23 Car. 2, which made capital the infliction, with malice aforethought and by lying in wait, of a variety of disfiguring or disabling bodily injuries, was held not to include any such outrage, however malicious and deliberate, when not preceded by a lying-in-wait with the intent of committing it (*d*). And it was much doubted whether a person who inflicted such injuries with intent to murder, and

(*a*) 2 Hale, 365.

(*b*) R. *v.* Stevens, 1 Moo. C. C. 409; R. *v.* Harris, 7 C. & P. 446; Comp. R. *v.* Shadbolt, 5 C. & P. 504; R. *v.* Waltham, 3 Cox. 442.

(*c*) R. *v.* Wood, 4 C. & P. 381.

(*d*) 1 Hawk. 108n. See also *v.* Child, 4 C. & P. 442.

not merely to maim and disfigure, fell within the Act (*a*).

An Act which made it penal to personate "any person entitled to vote," would not be violated by personating a dead voter (*b*). It would be different if the offence were personating a person "supposed "to be entitled to vote" (*c*). A penalty imposed on a man who ran away, leaving his wife and children chargeable, or whereby they became chargeable, would not be incurred by his simple desertion, without the intent that his family should become chargeable to the parish (*d*). A statute which imposed a penalty on unqualified persons who did any act appertaining to the office of proctor for fee or reward, would not apply to acts which, though usually performed by proctors, were not of strict right incident to their office, such as preparing the documents necessary for obtaining letters of administration, where there was no contest (*e*). An Act which punishes the obtaining of any "money or valuable "security" by a false pretence, is not violated by obtaining "credit on account," by a false pretence (*f*).

(*a*) So held *per* Lord King and Yates J. in R. *v.* Coke, 1 East, P.C. 400; *dubit.* Willes J. and Eyre B. See also R. *v.* Williams, Id. 424.

(*b*) Whiteley *v.* Chappell, LR. 4 QB. 147.

(*c*) R. *v.* Martin, R. & R. 324.

(*d*) Reeves *v.* Yeates, 1 H. & C. 435, 31 LJ. MC. 241; Sweeny *v.* Spooner, 3 B. & S. 329, 32 LJ. MC. 82.

(*e*) Stephenson *v.* Higginson, 3 HL. 638.

(*f*) R. *v.* Wavell, Ry. & Moo. 224.

Obtaining from the correspondent of a banker a sum of money on a cheque drawn in favour of the correspondent on the banker, on whom the drawer falsely pretended he had authority to draw, would not be an attempt to obtain money from the banker by false pretences. If the correspondent were to obtain the money from the banker, it would not be obtained by the authority of the drawer of the cheque; nor, presumably, by his wish, for he would gain nothing by it (*a*).

It was lately held that the Act which imposes a penalty for "baiting" animals, did not apply to setting dogs in pursuit of rabbits in a small enclosed space of three or four acres, from which the rabbits could not escape; the word "baiting" being, if not etymologically, at least popularly confined to attacks on animals tied to a stake (*b*). A person found on premises for an immoral purpose involving no breach of the criminal law, does not fall under the penalty imposed for being found on premises "for "an unlawful purpose" (*c*). Nor would a man who obtained a license to retail beer by means of a certificate that he was "a person of good character," be liable to conviction for using a certificate which he knew to be false, merely because he cohabited with a woman without being married to her (*d*).

(*a*) R. *v.* Garrett, Dears. 232, 23 LJ. MC. 30.

(*b*) Pitts *v.* Millar, LR. 9 QB. 380.

(*c*) Hayes *v.* Stephenson, 3 Law. T. NS. QB. 296.

(*d*) R. *v.* Leader, 16 CB. NS. 584, 33 LJ. MC. 231.

The Metropolis Local Management Act of 1862, in incorporating the powers for the "suppression" of nuisances, conferred by an earlier local Act, which contained, besides several provisions for getting rid of existing nuisances, a prohibition against keeping pigs, was held not to have comprised this last provision; as the effect of it was, not to "suppress," but to prevent the creation of nuisances (*a*). Where an Act, after providing, by one section, that any building, built or rebuilt, except on the site of a former dwelling, should not be "used" as a dwelling, unless there was an open space of twenty feet in front of it, without the previous consent of the local board, imposed, by another, a penalty if any building or work were "made or suffered to continue" contrary to the provisions of the Act, the Court refused to construe the latter section as including the offences prohibited in the former, though the effect of the decision was to leave them without specific provision for their punishment (*b*).

Again, as illustrative of the rule of strict construction, it is said that while remedial laws may extend to new things not in esse at the time of making the statute (*c*), penal laws may not. Thus, the 30 Eliz. c. 12, which took away the benefit of clergy from ac-

(*a*) Chelsea Vestry *v.* King, 17 CB. NS. 625; 34 LJ. MC. 9.

(*b*) Pearson *v.* Hull, 3 H. & C. 921, 35 LJ. MC. 44; diss. Martin B.

(*c*) 2 Inst. 35; *per cur.* in Dawes *v.* Painter, Freem. K. B. 176.

cessories after as well as before the fact, was held not to extend to accessories made by subsequent enactment. The receiver, therefore, of a stolen horse, who was made an accessory by a later statute, was held not ousted (*a*). Where one Act (24 & 25 Vict. c. 96, s. 91) made it felony to receive with guilty knowledge a chattel, the stealing of which was felony either at common law or under that Act; and a subsequent one (31 & 32 Vict. c. 116) made a partner who stole partnership property liable to conviction for the stealing, as though he had not been a partner; it was held that to receive such stolen property was not an offence under the earlier Act (*b*).

The Stock Jobbing Act, which, after referring, in the preamble, to the great inconveniences which had arisen, and daily arose by the wicked practice of stock jobbing,—diverting men from their ordinary pursuits, ruining families, discouraging industry, and injuring commerce,—declared void all such contracts "in any public or joint stock, or other public securi-"ties whatsoever," was held, notwithstanding the mischief in view, and the wide terms used, not to apply to transactions in foreign funds (*c*) or in railway shares (*d*); on the ground that the former were not dealt in, and the latter were not known, in England, when the Act was passed.

(*a*) Fost. Cr. L. 372.

(*b*) R. *v.* Smith, LR. 1 C.C. 270.

(*c*) Henderson *v.* Bise, 3 Stark. 158; Wells *v.* Porter, 2 Bing. NC. 722; comp. Smith *v.* Lindo, 27 LJ. CP. 196, 5 CB. NS. 587.

(*d*) Hewitt *v.* Price, 4 M. & Gr. 355.

But this degree of strictness may be regarded as extreme. It could hardly be contended that printing a treasonable pamphlet was not an offence against the statute of Edw. 3, because printing was not invented until a century after it was passed; or that it would not be treason to shoot the Queen with a pistol, or poison her with an American drug (*a*). The 55 Geo. 3, c. 58, s. 2, which enacts that no brewer or dealer in beer shall have, or put into beer, any liquor for darkening its colour, or use molasses or any preparation in lieu of malt and hops, under a penalty of 200*l.*, was held not to be confined to such dealers as were known at the time when the Act was passed, viz, licensed victuallers, licensed by a magistrate under the Act of 5 & 6 Edw. 6, c. 25, but to include the retailer of beer furnished with an excise license, who first came into legal existence under the 1 Wm. 4, c. 64 (*b*). The 8 Anne, c. 7, which enacted that if any sort of prohibited goods should be landed without payment of duty, the offender should forfeit treble value, was held to extend to gloves, which were not prohibited until the 6 Geo. 3 (*c*).

It was recently held that the 8 Geo. 2, which imposed a penalty for piratically engraving, etching, or otherwise, or "in any other manner," copying prints and engravings, applied to copying by photography, though that process was not invented till more than a

(*a*) Hallam, Const. Hist. c. 15.

(*b*) Atty.-Genl. *v.* Lockwood, 9 M. & W. 378.

(*c*) Atty.-Genl. *v.* Saggers, 1 Pri. 182.

century after the Act was passed (*a*). Under an Act which imposed a penalty for selling bread otherwise than by weight, except bread "usually sold" under the denomination of fancy bread, it was held penal to sell bread which would have fallen within the exception at the time when the Act was passed, but which had since ceased to be sold under the denomination of fancy bread (*b*).

The general principle in question is well exemplified by comparing the manner in which an omission which, it was inferable from the text, was apparently the result of accident, is dealt with in penal and in remedial Acts. Thus, where the owner of mines was required, under a penalty, in case (1) of loss of life to any person employed in the mine by reason of any accident, or (2) of personal injury arising from explosion, to send notice of such accident to an inspector within twenty-four hours "from the loss of life," (omitting the case of personal injury) the Court refused to supply the obvious omission in the latter branch of the sentence, and held that notice was not necessary when personal injury from explosion, short of loss of life, had occurred; although the mention of such injury in the earlier part of the sentence was idle and insensible without such an interpolation (*c*). If the statute

(*a*) Gambart *v.* Ball, 14 CB. NS. 306, 32 LJ. CP. 166; Graves *v.* Ashford, LC. 2 CP. 410.

(*b*) R. *v.* Wood, LR. 4 QB. 559.

(*c*) Underhill *v.* Longridge, 29 LJ. MC. 65.

had been remedial, the omission would probably have been supplied (*a*).

The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important; and it is by the light which each contributes that the meaning must be determined (*b*). Among them is the rule that that sense of the words is to be adopted which best harmonizes with the context, and promotes in the fullest manner the policy and objects of the Legislature (*c*). The paramount object, in construing penal as well as other statutes, is to ascertain the legislative intent; and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intention. They are to be taken in such a sense, bent neither one way nor the other, as will best manifest the legislative intent (*d*).

Thus, although the Act which punishes a man for running away from his wife and "children," thereby leaving them chargeable to the parish, applies only to the desertion of legitimate children; this rests not on any indisposition to depart from the strict and narrow meaning of the word, but on the ground that the object of the Legislature was limited to the enforce-

(*a*) *Re* Wainwright, 1 Phil. 258, *sup.* p. 225.

(*b*) *Per Cur.* in U. S. *v.* Hartwell, 6 Wallace, 395.

(*c*) *Id.* 396.

(*d*) *Id.*

ment of the man's legal obligation, which did not extend to the support of his illegitimate children (*a*). But the statute (4 & 5 Ph. & M. c. 8) which made it a criminal offence to take an unmarried girl from the possession and against the will of her father or mother, was held to apply to the case of a natural daughter taken from her putative father (*b*); for the wider construction obviously carried out more fully the aim and policy of the enactment. And it has been repeatedly held that the consent and concurrence of the girl were immaterial (*c*).

Lord Coke thought that burglary might be committed in a church, because a church is the mansion of God; but Lord Hale thought this opinion only a quaint term without any argument (*d*). The "breaking" required to constitute burglary includes acts which would not be so designed in popular language, such as lifting the flap of a cellar (*e*), and pulling down the sash of a window (*f*), or even raising a latch (*g*), or descending a chimney. Lord Hale, who doubted whether the latter act was a breaking, was relieved from deciding the point in the case before him, as it was

(*a*) R. *v.* Maude, 2 Dowl. N. S. 58.

(*b*) R. *v.* Cornforth, 2 Stra. 1162; and see R. *v.* Hodnett, 1 TR. 96.

(*c*) R. *v.* Robins, 1 C. & K. 456; R. *v.* Kipps, 4 Cox. 167; R. *v.* Biswell, 2 Cox, 279. Comp. R. *v.* Meadows, 1 C. & K. 399.

(*d*) 1 Hale, 556.

(*e*) R. *v.* Russell, 1 Moo. C. C. 377.

(*f*) R. *v.* Haines, R. 2 Moo. 451.

(*g*) R. *v.* Jordan, 7 CP. 432.

elicited that some bricks had been loosened in the thief's descent, which sufficed to constitute a breaking (*a*).

A threatening letter is "sent" when it is dropped in the way of the person for whom it is destined, so that he may pick it up (*b*); or is affixed in some place where he would be likely to see it (*c*); or is placed on a public road near his house, so that it may, however indirectly, reach him, which it eventually does after passing through several hands (*d*); although in none of these cases would the paper be popularly said to have been "sent."

To make false signals, and thereby to bring a train to a stand on a railway, was held to be within the enactment which made it an offence to "obstruct" a railway (*e*); and an enactment which punishes such mischievous obstructions was held to include railways not yet open to public traffic (*f*).

An Act which made it penal to "administer," or "to cause to be taken" a noxious drug, to procure abortion, would be violated by one who supplied such a drug to a woman, and explained to her how it was to be taken, and she afterwards took it accordingly, in his absence (*g*). And a man supplies such a drug,

(*a*) 1 Hale, 552.

(*b*) R. *v.* Lloyd, 2 East, PC. 1122; R. *v.* Wagstaff, R. LR. 398.

(*c*) R. *v.* Williams, 1 Cox, 16.

(*d*) R. *v.* Grimwade, 1 Den. 30; and see R. *v.* Jones, 1 Cox, 67; 5 Cox, 226.

(*e*) R. *v.* Hadfield, LR. 1 C. C. 253; R. *v.* Hardy, *Id.* 278.

(*f*) R. *v.* Bradford, Bell, 268.

(*g*) R. *v.* Wilson, D. & B. 127, 26 LJ. MC. 16; R. *v.* Farrow, D. & B. 164.

"knowing it to be intended" to procure abortion, if he so intended it, though the woman did not (*a*). An Act which prohibited under a penalty "the copying "of a painting" without the owner's leave, was held to reach a photograph of an engraving which the proprietor of the painting had made from it (*b*).

A man who fires from a highway at game, has trespassed on the land of the owner of the soil on which the highway runs; for the right of way over the road is only an easement, and if a man uses it for an unlawful purpose, he becomes a trespasser (*c*).

A person who pays for goods by a cheque on a bank where he has no assets, is guilty of "obtaining goods "by false pretences," for in giving the cheque he impliedly represents that he has authority from the bank to draw it, and that it is a good and valid order for payment of the amount (*d*).

An Act which imposed a penalty on corn-dealers for omitting to make a return of every parcel of corn bought from them, would be broken; though the unreturned sales were not evidenced in writing as required by the Statute of Frauds, and therefore were not enforceable in a Court of Justice (*e*).

The enactment which punished with transportation

(*a*) R. *v.* Hillman, L. & C. 343, 33 LJ. MC. 60; comp. R. *v.* Fretwell, L. & C. 161, 31 LJ. MC. 145.

(*b*) Exp. Beal, LR. 3 QB. 387.

(*c*) Mayhew *v.* Wardley, 14 CB. NS. 550; R. *v.* Pratt, 4 E. & B. 860.

(*d*) R. *v.* Hazelton, LR. 2 CC. 134; R. *v.* Parker, 7 C. & P. 829.

(*e*) R. *v.* Townrow, 1 B. & Ad. 465.

for life every person, whether employed by the Postmaster-General, or by "any person under him, or on "behalf of the post-office," who stole a letter with money in it, was held to include a person who gratuitously assisted a postmaster, at his request, in sorting the letters (*a*). The Bankrupt Act of 1849, which disentitled a bankrupt to his certificate, if he had, within a year of his bankruptcy, lost two hundred pounds by "any contract" for the purchase or sale of Government or other "stock," was held to apply to one who had lost that amount in the purchase of railway "shares," and by several contracts (*b*).

The employment of an English steam tug in towing a prize to the captor's waters, is a breach of the provision of the Foreign Enlistment Act of 1870, against "dispatching a ship to be employed in the military or "naval service of a foreign state" (*c*). Where an Act (7 Vict. c. 15) provided that if any accident occurred in a factory, causing any injury to any person employed there, of such a nature as to prevent his return to work at 9 A.M. on the next day, it must, under a penalty, be reported by the occupier of the factory to the district surgeon and the sub-inspector; it was held that the Act applied to all accidents, whether caused by the machinery of the factory or otherwise; and that the

(*a*) R. *v.* Reason, Dears. 226, 23 LJ. MC. 11; comp. Martin *v.* Ford, 5 TR. 101.

(*b*) Exp. Copeland, 22 LJ. Bcy. 17, 2 De G. M. & G. 914.

(*c*) Dyke *v.* Elliot, LR. 4 PC. 184.

sufferer was prevented from returning to work next day, within the meaning of the Act, although he did return for that purpose, but was unable to work (*a*).

The Corrupt Practices Prevention Act of 1854, which declares that whoever, "directly or indirectly," makes a gift to a person to induce him to "endeavour "to procure the return" of any person to Parliament shall be deemed guilty of bribery, was held to extend to a gift made to induce its recipient to vote for the giver at a preliminary test ballot held for the purpose of selecting one of three candidates to be put up when the election came. In voting for the giver at the test ballot, the voter indirectly "endeavoured to pro-"cure" his return at the election (*b*).

In a recent case, an enactment which prohibited any officer concerned in the administration of the poor laws from "supplying for his own profit" any goods "ordered" to be "given" in parochial relief to any person, was held to reach a guardian whose partner had, with knowledge of the facts, sold a bedstead to the relieving officer on behalf of the parish for delivery to a pauper, although the guardian was ignorant of the transaction, the bedstead had not been "ordered" by the guardians (*c*), and it was only lent, not "given," in parochial relief (*d*). In another, the

(*a*) Lakeman *v.* Stephenson, LR. 3 QB. 192.

(*b*) Britt *v.* Robinson, LR. 5 CP. 503.

(*c*) Greenhow *v.* Palmer, 6 H. & N. 882, 31 LJ. Ex. 4.

(*d*) Davies *v.* Harvey, LR. 9 QB. 433; comp. Proctor *v.* Manwaring, 3 B. & A. 145.

occupier of enclosed grounds, who admitted the public on it, on payment, to witness a foot-race and a pigeon-match, was held liable to conviction for having used the place for the purposes of betting, as a number of professional betting men had obtained entrance and carried on their business there with his knowledge; though this was not the immediate purpose for which he had thrown the grounds open, and it did not appear that he and the betting men were in any way connected in their business,or that he derived any profit from it (*a*).

A few cases may be added in further illustration of the spirit in which the criminal law is construed. Under an Act which imposed a penalty for exercising one's ordinary calling on the Lord's Day, only one penalty would be incurred, however numerous might be the acts done in the course of the day in the exercise of the calling (*b*). The calling is exercised but once in the day, whether it be exercised for a moment only, or for the whole day. It would be unreasonable to suppose that the Legislature intended that if a tailor sewed on the Lord's Day, every stitch should be a separate offence (*c*). But where a statute, after imposing a penalty on any person who should "profanely curse or swear," required that the conviction should be drawn up in a given form which stated the

(*a*) Eastwood *v.* Miller, LR. 9 QB. 440.

(*b*) Crepps *v.* Durden, Cowp. 640; Gregory *v.* Fell, 6 Jur. 422.

(*c*) *Per* Lord Mansfield, *Id.*

person had been convicted of swearing "one or more" oaths, it was held that though a volley of oaths formed but one offence, the Act imposed a cumulative penalty at the rate of so much for each oath (*a*).

An Act which made it felony riotously to demolish, pull down, or destroy, or to begin to demolish, pull down, or destroy a church or dwelling, would not reach a case where the demolition had not gone beyond moveable shutters not attached to the freehold; for whatever might have been the intent of the rioters, this was not a beginning of the demolition of the house to which the shutters belonged (*b*); nor would a partial demolition of the building be a "beginning to demolish" within the Act, if not done with the intention of completing it (*c*).

But if the structure were in all substantial respects destroyed, the offence would be included in the Act, although some portion, as, for instance, a chimney, had been suffered to remain uninjured (*d*). Nor would it be considered as beyond the operation of the Act, if the demolition had been effected by fire, although arson is a distinct felony provided for by a different enactment (*e*).

Some of the decisions relative to the theft of writings

(*a*) R. *v.* Scott, 4 B. & S. 368, 33 LJ. MC. 15. See also Brooke *v.* Millikin, 3 TR. 509; Collins *v.* Hopwood, 15 M. & W. 459; and R. *v.* Waterhouse, LR. 7 QB. 545.

(*b*) R. *v.* Howell, 9 C. & P. 437.

(*c*) *Id.* R. *v.* Thomas, 4 C. & P. 237, *per* Littledale J.; R. *v.* Price, 5 C. & P. 510, *per* Tindal C. J.

(*d*) R. *v.* Langford, Car. & M. 602.

(*e*) R. *v.* Harris, and R. *v.* Simpson, C. & M. 661, 669.

seem to convey a fair impression of the same spirit. As neither land nor mere rights were capable of being stolen, it was early established that title deeds relating to lands and written contracts, which were mere rights or the evidences of rights, were also not the subjects of larceny. To steal a skin worth a shilling was felony, but when it had 10,000*l.* added to its value by what was written on it, it was no offence at common law to take it away (*a*). If, indeed, the document were worthless as a right, or evidence of a right, such as an unstamped cheque, the thief might be punished for stealing the piece of paper on which it was written (*b*); but if it represented a right to land or to an action, it lost, as regards the question of larceny, its physical character of parchment or paper.

Where the absence of a stamp did not destroy its documentary character, but only excluded it as evidence in a court of justice, the theft could not be treated as of a piece of paper (*c*). But a paper like a pawnbroker's ticket, indicating not a mere right of action, but a right to a specific personal chattel of which the holder of the ticket may be regarded as in possession (for the possession of the pawnor is his possession for the purpose of an indictment), would be the subject of larceny (*d*).

(*a*) Arg. in R. *v.* Westbeer, 2 Stra. 1135. Nunc aliter, *vide* 24 & 25 Vict. c. 96, s. 27 and s. 2.

(*b*) R. *v.* Perry, 1 Den. 69.

(*c*) R. *v.* Watts, 1 D. & L. 326, 23 LJ. MC. 56.

(*d*) R. *v.* Morrison, Bell, 158, 28 LJ. MC. 210.

An Act which punished the obtaining a "valuable "security" by false pretences, would include a railway ticket, which is evidence of a right of being carried on the railway (*a*).

The tendency of modern decisions, upon the whole, is to narrow materially the difference between what is called a strict and a beneficial construction. Remedial statutes are now construed with a more strict regard to the language (*b*), and penal, with a more rational regard to the manifest aim and intention of the Legislature, than formerly. It is unquestionably right that the distinction should not be altogether erased from the judicial mind (*c*); for it is required by the spirit of our free institutions that the interpretation of all statutes should be highly favourable to personal liberty (*d*); and it is preserved in a certain reluctance to supply the defects of language, or to eke out the meaning of an obscure passage by strained or doubtful inferences (*e*). The effect of the rule of strict construction might almost be summed up in the remark, that where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the

(*a*) R. *v.* Boulton, 1 Den. 508, 19 LJ. MC. 67.

(*b*) Sup. 226, et seq.

(*c*) *Per* Pollock C. B. in Nicholson *v.* Fields, 32 LJ. Ex. 235, 7 H. & N. 817.

(*d*) *Per* Lord Abinger in Henderson *v.* Sherborne, 2 M. & W. 239.

(*e*) *Per* Story J. in the Industry, 1 Gall. 117.

doubt should be given to the subject, and against the Legislature which has failed to explain itself (*f*). But it yields to the paramount rule that every statute is to be expounded according to the intent of them that made it (*g*); and that all cases within the mischiefs aimed at are to be held to fall within its remedial influence (*h*).

SECTION II.—STATUTES ENCROACHING ON RIGHTS, OR IMPOSING BURDENS.

Statutes which encroach on the rights of the subject, whether as regards person or property, receive a strict construction. Thus, the Act 21 Edw. 1, de malefactoribus in parcis, which authorized a parker to kill trespassers whom he found in his park, and who refused to yield to him, was construed as strictly limited to a legal park, that is, one established by prescription or Royal Charter, and not merely one by reputation (*i*).

A harbour Act, which imposed a penalty on "any

(*f*) See Hull Dock Co. *v.* Browne, 2 B. & Ad. 59; *per* Pollock in Nicholson *v.* Fields, ubi sup.; and *per* Bramwell B. in Foley *v.* Fletcher, 28 LJ. Ex. 106, 3 H. & N. 769; Puff. L. N. b. 5, c. 12, s. 5, Barb. n. 4.

(*g*) 4 Inst. 330, 11 Cl. & F. 143, 2 Peters, 662.

(*h*) Fennell *v.* Ridler, 5 B. & C. 409; The Industry, ubi sup. See R. *v.* Charretie, 13 QB. 447; Vine *v.* Leeds, inf. 259; R. *v.* Zulueta, sup. 122; R. *v.* Morris, sup. 180; *Re* Fergusson, sup. p. 204, and the cases in pp. 80, 87.

(*i*) 1 Hale, 491; 3 Dyer, 326 b.

"person" who placed articles "on any quay, wharf, "or landing place, within ten feet of the quay head, "or on any space of ground immediately adjoining "the said haven, within ten feet from high-water "mark," so as to obstruct the free passage over it, was held to apply only to ground over which there was already a public right of way, but not to private property not subject to any such right, and in the occupation of the person who placed the obstruction on it (*a*). Notwithstanding the comprehensive nature of the general terms used, it was not to be inferred that the Legislature contemplated such an interference with the rights of property as would have resulted from construing the words as creating a right of way.

But an Act (33 & 34 Vict. c. 29, s. 14), which enacted that every person "convicted of felony" should for ever be disqualified from selling spirits by retail, and that if any such person should take out, or have taken out a licence for that purpose, it should be void, was held to include a man who had been convicted of felony before, and had obtained a licence after the Act was passed. Although the expression "convicted "of felony" was ambiguous, as it might either include persons who had been already convicted, or only those who should thereafter be convicted, it was considered that the object of the Act was to protect the public from having beerhouses kept by men of bad character,

(*a*) Harrod *v.* Worship, 1 B. & S. 381, 30 LJ. MC. 165; diss. Wightman J.

and that the Act was to be construed in the sense which best advanced the remedy and suppressed the mischief. This construction gave, in a certain sense, a retrospective operation to the enactment (*b*).

Statutes which impose pecuniary burdens, also, are subject to the rule of strict construction. It is a well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties (*c*). The subject is not to be taxed unless the language by which the tax is imposed is perfectly clear and free from doubt (*d*). In a case of doubt the construction most beneficial to the subject is to be adopted (*e*). Thus, it was held that an Act which imposed a stamp on every writing given on the payment of money, "whereby any sum, debt, or demand" was "acknow-"ledged to have been paid, settled, balanced, or other-"wise discharged," was held not to extend to a receipt given on the occasion of a sum being deposited (*f*). Where an Act imposed a stamp duty on newspapers

(*b*) Vine *v.* Leeds (JJ.), QB. HT. 1875; diss. Lush J.

(*c*) *Per* Bayley J. in Denn *v.* Diamond, 4 B. & C. 243; *per* Park J. in Doe *v.* Snaith, 8 Bing. 152.

(*d*) *Per* Cur. in Hull Dock Co. *v.* Browne, 2 B. & Ad. 59; *per* Pollock C. B. in Nicholson *v.* Fields, 31 LJ. Ex. 233; Parry *v.* Croydon Gas Co., 11 CB. NS. 579; 15 Id. 568.

(*e*) *Per* Lord Lyndhurst in Stockton R. Co. *v.* Barrett, 11 Cl. & F. 602; *per* Parke B. in *Re* Micklethwaite, 11 Ex. 456, 25 LJ. 19.

(*f*) Tomkins *v.* Ashby, 6 B. & C. 541. See also Wroughton *v.* Turtle, 11 M. & W. 561.

and defined a newspaper as comprising "any paper "containing public news, intelligence, or occurrences "... to be dispersed and made public," and also "any paper containing any public news, intelligence, "or occurrences, or any remarks or observations "thereon ... published periodically or in parts "or numbers, at intervals not exceeding twenty-six "days," and not exceeding a certain size, it was held that a publication, the main object of which was to give news, but was published at intervals of more than twenty-six days, was not liable to the stamp duty as a newspaper (*a*). An Act which imposes a stamp duty on "every charter party, or memorandum, or other "writing between the captain or owner of a vessel "and any other person, relating to the freight or con-"veyance of goods on board," does not extend to a guarantee for the due performance of a charter party (*b*). And yet, where an Act, after imposing a stamp on contracts, exempted those which were made relative to the sale of goods, a guarantee for the payment of the price on such a sale was held included in the exemption (*c*); the same words being susceptible of meaning different things when used to impose a tax, or to exonerate from it (*d*).

(*a*) Atty.-Genl. *v.* Bradbury, 7 Ex. 97, 21 LJ. Ex. 12.

(*b*) Rein *v.* Lane, LR. 2 QB. 144.

(*c*) Warrington *v.* Furbor, 8 East, 242.

(*d*) *Per* Blackburn J., LR. 2 QB. 151, citing Curry *v.* Edensor, 3 TR. 527, and Warrington *v.* Furbor, ubi sup.

At the same time, such Acts, like penal Acts, are not to be so construed as to furnish a chance of escape and a means of evasion (*a*). In America, indeed, revenue laws are not regarded as penal laws in the sense that requires them to be construed with great strictness in favour of the defendant. They are regarded rather in their remedial character; as intended to prevent fraud, suppress public wrong, and promote the public good; and are so construed as to most effectually accomplish those objects (*b*).

It is said that all statutes which give costs are to be construed strictly, on the ground that costs are a kind of penalty (*c*). There is little authority in support of the proposition. On the other hand, the power of ordering the payment of costs has been sometimes construed on the principle of beneficial and liberal construction; as where, for instance, they have been imposed on persons who were strangers to an action of ejectment, but at whose instance it was brought or defended (*d*).

Enactments, also, which impose forms and solemnities on contracts on pain of invalidity are con-

(*a*) U. S. *v.* Thirty-six barrels of wine, 7 Blatchf. 459.

(*b*) Cliquot's Champagne, 3 Wallace, 145.

(*c*) Cone *v.* Bowles, 1 Salk. 205.

(*d*) Hutchinson *v.* Greenwood, 4 E. & B. 324; Mobbs *v.* Vandenbrande, 33 LJ. QB. 177; comp. Evans *v.* Rees, 2 QB. 334; Anstey *v.* Edwards, 15 CB. 212; Hayward *v.* Gifford, 4 M. & W. 194. See also R. *v.* Pembridge, 3 QB. 901, sup. 52, and 201.

strued strictly, so as to be as little restrictive as possible of the natural liberty of contracting. The Statute of Frauds which enacts that no action shall be brought on contracts (sect. 4), or that the contracts shall not be good (sect. 17), unless "the agreement or "some note or memorandum thereof shall be in writ-"ing and signed by the party to be charged there-"with, or some other person thereunto by him law-"fully authorized," has given rise to many decisions, apparently in this spirit. Thus, although it is unquestionably necessary that all the essential elements of the contract shall appear in the writing, such as the subject-matter, the consideration (*a*), and the parties (*b*), it has been held that it is not necessary that they should be contained in any formal document. A note or letter stating the material particulars, verbally accepted, suffices (*c*). The statute is satisfied also by a number of letters or other documents connected together by internal evidence, if the whole contract may be collected from them (*d*). It has been said that the cases have gone very far in putting the correspondence of parties together to constitute a memo-

(*a*) Wain *v.* Warlters, 5 East, 10.

(*b*) Williams *v.* Lake, 2 E. & E. 349; Williams *v.* Byrnes, 1 Moo. NS. 154.

(*c*) Colman *v.* Upcot, 5 Vin. Ab. 527, pl. 17; Welford *v.* Beazley, 3 Atk. 503; Bill *v.* Bament, 9 M. & W. 36.

(*d*) Shortrede *v.* Cheek, 1 A. & E. 57; Boydell *v.* Drummond, 11 East, 142; Dobell *v.* Hutchinson, 3 A. & E. 355; Watts *v.* Ainsworth, 1 H. & C. 83, 31 LJ. Ex. 448; Morris *v.* Wilson, 5 Jur. NS. 168.

randum to satisfy the statute (*a*). Indeed, as it becomes necessary, in such a case, to inquire what the contract really was, in order to determine whether the informal papers constitute a written note of it, the very evil is let in against which the statute aimed (*b*). A letter from the purchaser addressed to a third person, stating the terms of the contract (*c*), and one from the purchaser to the seller, which after setting forth its terms repudiated the contract, have been held sufficient notes or memoranda of the bargain to satisfy the statute (*d*).

So although it is necessary that the parties to the contract should be sufficiently described to admit of their identification (*e*), it is not necessary that they should be described by name. It has been held, for instance, that a contract of sale signed by the auctioneer, as "the agent of the proprietor" of the property sold, sufficiently described the seller (*f*); though a contract similarly "signed by the agent of "the vendor" would not suffice (*g*); for a mere asser-

(*a*) *Per* Pollock C. B. in McLean *v.* Nicoll, 7 Jur. NS. 999.

(*b*) *Per* Channell B., Ibid.

(*c*) Gibson *v.* Holland, LR. 1 CP. 1. Sugd. V. & P. 113, 13th ed.

(*d*) Bailey *v.* Sweeting, 9 CB. NS. 843, 30 LJ. CP. 150; Wilkinson *v.* Evans, LR. 1 CP. 407, dubit. Cockburn C. J. in Smith *v.* Hudson, 34 LJ. QB. 149, 6 B. & S. 431; Buxton *v.* Rust LR. 7 Ex. 1, 279.

(*e*) Charlewood *v.* Bedford, 1 Atk. 495; Champion *v.* Plummer, 1 N. R. 252; Williams *v.* Lake, 29 LJ. QB. 1, 2 E. & E. 349.

(*f*) Sale *v.* Lambert, LR. 18 Eq. 1.

(*g*) Potter *v.* Duffield, Id. 4.

tion that the person who sells is the seller, is not a description of the seller.

Acts which confer exceptional exemptions and privileges, correlatively trenching on general rights, are subject to the same principle of strict construction. The enactment, for instance, that ship-owners should not be liable for damage done by their ships without their default, beyond the value of the "vessel and its "freight," was held to include, in this value, the fishing stores of a vessel employed in the Greenland fishery; although they would not have been covered by a policy on the ship and freight, and the phrase, "the "value of the ship and her appurtenances" had been used ten times in other parts of the Act (*a*). This decision rested on the ground that the enactment abridged the common law right of the injured person; that the ship-owner was not entitled to more than the meaning of the words strictly imported; and that the word "ship" included everything that was on board of her for her adventure. So, the enactments which exonerate a ship-owner from liability for damage caused by his ship through the default of a compulsorily employed pilot, are restricted to cases where the pilot was the sole cause of the damage, without any default on the part of the master or crew (*b*).

The same principle of construction is applied to

(*a*) Gale *v.* Laurie, 5 B. & C. 156.

(*b*) The Protector, 1 W. Rob. 45; The Diana, 4 Moo. PC. 11; The Iona, LR. 1 PC. 426.

enactments which delegate subordinate legislative or other powers. Thus, a general order made by the judges of the Court of Chancery, under Parliamentary authority to regulate the procedure of that Court, and which directed how a defendant "in any suit" might be served with process abroad, was held by Lord Westbury (*a*) limited to those suits in which service abroad had been provided for by law, viz., suits relating to land and public stock by the 2 Will. 4, c. 33, and 4 & 5 Will. 4, c. 82. If the order had been construed literally as applicable to all suits, it would, while professedly only regulating the procedure, have, in effect, extended the jurisdiction of the Court; an object foreign to the Act which conferred the power of regulation. This decision, indeed, was afterwards overruled; but it was on the ground that the jurisdiction of the Court had always existed, though there was no power of enforcing it; and that the order, therefore, did not extend the jurisdiction (*b*).

Under a similar power to regulate the practice of their Courts, it is more than doubtful whether the County Court judges have authority to make a rule empowering a judge to appoint a deputy registrar, if the registrar is absent at the sitting of the Court (*c*). The 22 & 23 Vict. c. 21, which empowered the Barons of the

(*a*) Cookney *v.* Anderson, 1 De G. J. & Sm. 365; 32 LJ. Ch. 427.

(*b*) Drummond *v.* Drummond, LR. 2 Ch. 32; Hope *v.* Hope, 4 De G. M. & G. 345.

(*c*) Wetherfield *v.* Nelson, LR. 4 CP. 571.

Exchequer to make rules as to the process, practice and pleading of their Court in revenue cases, was held not to authorize them to make rules granting an appeal to the Exchequer Chamber and House of Lords (*a*). A different construction would, in effect, have given the Barons authority to confer jurisdiction on two superior Courts, and to impose on them the duty of hearing an appeal against its decisions (*b*). So, where an Act gives an appeal to the next Quarter Sessions, that Court cannot, under a general power to regulate its procedure, reject it, unless the conviction or order appealed against be filed (*c*), or notices not required by the statute be given (*d*), or the appeal itself be lodged, so many days before the Sessions (*e*). It might perhaps lawfully postpone the hearing of an appeal not complying with those conditions within such time; but to reject it altogether would be to refuse the appellant the privilege given by the Act, by imposing conditions which the Legislature had not imposed.

The power given by the 43 Eliz. c. 2, to justices to appoint "four, three, or two substantial householders," as parish overseers, is not well executed by appointing

(*a*) Atty.-Genl. *v.* Sillem, 10 HL. 705, 33 LJ. Ex. 92, 209.

(*b*) *Per* Lord Kingsdown, Id. 230, 10 HL. 775.

(*c*) R. *v.* West Riding, 2 QB. 705.

(*d*) R. *v.* West Riding, 5 B. & Ad. 667; R. *v.* Norfolk, 5 B. & Ad. 990; R. *v.* Surrey, 6 D. & L. 735; R. *v.* Blues, 24 LJ. MC. 138, 5 E. & B. 291.

(*e*) R. *v.* Pawlett, LR. 8 QB. 491; R. *v.* Staffordshire, 4 A. & E. 844.

more than four (*a*); or by appointing a single one, even when he is the only householder in the parish (*b*). The 355th section of the Merchant Shipping Act, 1854, which empowers the Board of Trade to give the master of a ship a certificate to pilot "any ships belonging to "the same owner," was construed as requiring that the name of the owner should be mentioned in the certificate; and a certificate representing another person as the owner, was held not granted in compliance with the statute (*c*).

Where trustees, who were authorized to borrow 30,000*l.* for building a chapel, and to levy the amount, with interest, by a rate, borrowed 32,000*l.*, and made a rate to pay the interest on the whole of that sum, it was held not only that they had exceeded their power, but that the rate was bad in toto (*d*).

So, a local Act which authorized a navigation company to make bye-laws for the orderly using of the navigation, and for the governing of the boatmen carrying merchandize on it, was held not to authorize a bye-law which closed the navigation on Sundays, and prohibited the use of any boat on it, except for going to church (*e*). Where a charter

(*a*) R. *v.* Loxdale, 1 Burr, 145.

(*b*) R. *v.* Cousins, 4 B. & S. 849, 33 LJ. MC. 87; R. *v.* Clifton, 2 East, 168.

(*c*) The Earl of Auckland, 30 LJ. P. M. & A. 121, 127.

(*d*) Richter *v.* Hughes, 2 B. & C. 499.

(*e*) Calder and Hebble Nav. Co. *v.* Pilling, 14 M. & W. 76.

which founded a school, empowered the governors to remove the master at their discretion, and also authorized them to make bye-laws; it was held that a bye-law ordaining that the master should not be removed unless sufficient cause was exhibited in writing against him, signed by the governors, and declared by them to be sufficient, was void; for the power to make bye-laws did not authorize the making of one which restrained and limited the powers originally given to the governors by the founder. This was in effect to alter the constitution of the school (*a*).

As regards enactments of a local or personal character, which confer any exceptional exemption from a common burden (*b*), or invest private persons or bodies, for their own benefit and profit, with privileges and powers interfering with the property or rights of others, they are to be construed more strictly perhaps than any other kind of enactment. The Courts take notice that they are obtained on the petitions framed by their promoters, and are in effect contracts between those persons and the Legislature, or the public. Their language is therefore treated as the language of their promoters, who asked the Legislature

(*a*) R. *v.* Darlington School, 6 QB. 682, questioned by Lord Hatherley in Dean *v.* Bennett, LR. 6 Ch. 489. See also R. *v.* Cutbush, 4 Burr. 2204; R. *v.* Wood, 5 E. & B. 49; Chilton *v.* London and Croydon R. Co., 16 M. & W. 212; Williams *v.* G. W. R. Co., 10 Ex. 16; Hutton *v.* Scarborough Hotel, 2 Dr. & Sm. 521, 34 LJ. Ch. 643. See also Hall *v.* Nixon, 44 LJ. MC. 51.

(*b*) See ex. gr. Perchard *v.* Heywood, 8 TR. 468.

to confer exceptional powers on them; and when doubt arises as to the construction of that language, the maxim, ordinarily inapplicable to the interpretation of statutes, that verba cartarum fortius accipiuntur contra proferentem, or that words are to be understood most strongly against him who uses them, is justly applied. The benefit of the doubt is to be given to those who might be prejudiced by the exercise of the powers which the enactment grants, and against those who claim to exercise them (*a*).

Even if they were not regarded in the light of contracts, they would seem to be subject to strict construction on the same ground as grants from the Crown, to which they are analogous, are subject to it. As the latter are construed strictly against the grantee, on the ground that prerogatives, rights, and emoluments are conferred on the Crown for great purposes and for the public use, and are therefore not to be understood as diminished by any grant

(*a*) See, among many authorities, R. *v.* Croke, Cowp. 301, Lofft, 438; Gildart *v.* Gladstone, 11 East, 685; Hull Dock Co. *v.* La March, 8 B. & C. 52; Dudley Canal Co. *v.* Grazebrook, 1 B. & Ad. 59; Hull Dock Co. *v.* Browne, 2 B. & Ad. 58; Blakemore *v.* Glamorganshire Canal Co., 1 M. & K. 154; Webb *v.* Manchester R. Co., 4 Myl. & C. 116; Stockton and Darlington R. Co., 11 Cl. & F 590, 7 M. & Gr. 870; Scales *v.* Pickering, 4 Bing. 448; Parker *v.* G. W. R. 7 M. & Gr. 253; Eversfield *v.* Mid-Sussex R. Co., 3 De G. & J. 286; Simpson *v.* S. Staffordshire Waterworks, 34 LJ. Ch. 380; R. *v.* Wycombe, LR. 2 QB. 310; Morgan *v.* Metropolitan R. Co., LR. 4 CP. 97.

beyond what it takes away by necessary and unavoidable construction (*a*); so the Legislature, in granting away, in effect, the ordinary rights of the subject, should be understood as granting no more than passes by necessary and unavoidable construction.

It may be added that in construing these Acts, the Courts do not shut their eyes to the fact that those clauses, frequently found embodied in them, which are, in effect, private arrangements between the promoters, and particular persons acting with greater caution than others, or with a stronger desire to make a better bargain for themselves, are not inserted by the Legislature as part of a general scheme of legislation, but are simply introduced at the request of the parties concerned. Such clauses are therefore treated as isolated, and foreign to the rest of the Act; so that their wording, contrary to the general rule (*b*), is not to be regarded as throwing any light on the construction of it (*c*).

The principle of strict construction is less applicable where the powers are conferred on public bodies for essentially public purposes; as, for instance, to those given to the Metropolitan Board of Works (*d*).

(*a*) *Per* Lord Stowell in The Rebeckah, 1 Rob. 230.

(*b*) Sup. p. 25.

(*c*) See *per* Lord Cairns in East London R. Co. *v.* Whitechurch, LR. 7 HL. 89.

(*d*) *Per* Wood V. C. in N. London R. Co. *v.* Metrop. B. of Works, Johns. 405, 28 LJ. Ch. 909. See also Pallister *v.* Gravesend, 9 CB. 774; Galloway *v.* London (Mayor of), LR. 1 HL. 34; Quinton *v.* Bristol (Mayor of), LR. 17 Eq. 524.

CHAPTER XI.

SECTION I.—SOME SUBORDINATE PRINCIPLES—EFFECT OF USAGE.

It is laid down that the best exposition of a statute or any other document is that which it has received from contemporary authority. Optimus interpres usus. Contemporanea expositio est optima et fortissima in lege (*a*). Where this has been given by enactment or judicial decision, it is of course to be accepted as conclusive (*b*).

The meaning publicly given by contemporary, or long professional usage, is presumed to be the true one, even when the language is hardly doubtful. Those who lived at or near the time when it was passed, may reasonably be supposed to be better acquainted, than their descendants, with the circumstances to which it had relation, as well as with the sense then attached to legislative expressions (*c*). For this pur-

(*a*) 2 Inst. 11.

(*b*) See ex. gr. *per* Hullock B. in Booth *v.* Ibbotson, 1 Yo. & J. 360; *per* Martin B. in Curlewis *v.* Mornington, 7 E. & B.

(*c*) Dig. 1, 3, 37; Co. Litt. 8b.; 2 Inst. 18, 282; Bac. Ab. Stat. I. 5; 2 Hawk. c. 9, s. 3;

pose, therefore, it becomes often material to inquire what has been done under an Act; this being of more or less cogency, according to circumstances, for determining the meaning given by contemporaneous exposition (*a*).

It has been said, indeed, that usage is only the interpreter of a doubtful law, but cannot control the language of a plain one; and that if it has put a wrong meaning on unambiguous language, it is rather an oppression of those concerned than an exposition of the Act, and must be corrected (*b*). But this may depend materially on the nature of the usage. Where it has been of an authoritative character, and especially where the statute is an ancient one, the interpretations of usage have materially modified the meaning of apparently unequivocal language. Thus, the statute,

Sheppard *v.* Gosnold, Vaugh. 169; *per* Lord Mansfield in R. *v.* Varlo, Cowp. 250; *per* Lord Kenyon in Leigh *v.* Kent, 3 TR. 364, Blankley *v.* Winstanley, Id. 286, and R. *v.* Scott, Id. 604; *per* Buller J. in R. *v.* Wallis, 5 TR. 380; *per* Lord Ellenborough in Kitchen *v.* Bartsch, 7 East, 53; *per* Best C. J. in Stewart *v.* Lawton, 1 Bing. 377; *per* Lord Hardwicke in Atty.-Genl. *v.* Parker, 3 Atk. 576; *per* Lord Eldon in Atty.-Genl. *v.* Forster, 10 Ves. 338; *per* Parke B. in Jewison *v.* Dyson, 9 M. & W. 556, and Clift *v.* Schwabe, 3 CB. 469; R. *v.* Mashiter, 6 A. & E. 153; R. *v.* Davie, Id. 374; Newcastle *v.* Atty.-Genl. 12 Cl. & F. 419; Smith *v.* Lindo, 4 CB. NS. 395; R. *v.* Herford, 3 E. & E. 115; Atty.-Genl. *v.* Jones, 2 H. & C. 347; Montrose Peerage, 1 Macq. HL. 401.

(*a*) R. *v.* Canterbury (Abp. of), 11 QB. 581, *per* Coleridge J.

(*b*) Id.; Vaugh. 170; and *per* Lord Brougham in Dunbar *v.* Roxburghe, 3 Cl. & F. 354.

1 Westm. c. 10, which enacts that coroners shall be chosen of the most legal and wise knights, has always been understood to admit of the election of coroners who were not knights (*a*). Though the 15 Rich. 2, enacted that the Admiralty should have no jurisdiction over contracts made in the bodies of counties, seamen engaging in England have nevertheless always been admitted to sue for wages in that Court (*b*), where the remedy is easier and better than in the Common Law Courts; on the ground, it has been said (*c*), that communis error facit jus.

A power given by the 6 Hen. 8, c. 6, to the judges of the Queen's Bench, to issue a writ of procedendo, was held, from the course of practice, to be exercisable by a single judge at chambers (*d*). Although the 31 Eliz. c. 5, which limited the time for bringing actions on penal statutes to two years, when the action was brought for the Queen, and to one year, when brought as well for the Queen as for the informer, was silent as to actions brought for the informer alone; it was held, partly on the ground of long professional understanding, that the last-mentioned actions were limited to one year (*e*). In a recent case the Court of Queen's Bench was influenced in its construction of a statute of Anne by the fact that it was

(*a*) 2 Hawk. c. 9, s. 2.

(*b*) Smith *v.* Tilley, 1 Keb. 712.

(*c*) *Per* Lord Holt in Clays *v.* Sudgrave, 1 Salk. 33.

(*d*) R. *v.* Scaife, 17 QB. 238. See Leigh *v.* Kent, 3 TR. 362.

(*e*) Dyer *v.* Best, LR. 1 Ex. 152.

that which had been generally considered the true one for one hundred and sixty years (*a*).

Even a very modern Act has received an interpretation from authoritative usage which would hardly have been otherwise given to it. The Central Criminal Court Act, 4 & 5 Will. 4, c. 36, which empowers the judges of that Court, or any "two or more" of them, to try all offences which might be tried under a commission of oyer and terminer for London or Middlesex, was construed to authorize a single judge to try; such having been the inveterate practice under the Act (*b*). A contrary resolution, to use the words of Parker, C. J., in an early case, would have been, in some measure, an overturning of the justice of the nation for years past (*c*).

When the question arose whether a person convicted at one time of several offences could be considered, at the time of the adjudication, as "in "prison undergoing imprisonment," within the 25th sect. of the 11 & 12 Vict. c. 43 (which authorizes the convicting justice, in that case, to make the period of imprisonment for the second offence begin from the expiration of that of the first), it was decided in the affirmative, partly, indeed, in conformity with the construction put on the analogous enactment in the 7 & 8

(*a*) Cox *v.* Leigh, LR. 9 QB. 333.

(*b*) R. *v.* Leverson, LR. 4 QB. 394; and see Stuart *v.* Laird, 1 Cranch, 299.

(*c*) In R. *v.* Bewdley, 1 P. Wms. 223.

Geo. 4, c. 28, but partly also in consequence of the practice of the judges for forty years (*a*).

The understanding which is accepted as authoritative on such questions, is not merely that which has been speculative merely, or floating in the minds of professional men; it must have been acted on, and acted on in general practice (*b*), and publicly. A mere general practice which had grown up in a long series of years, on the part of the officers of the crown, of not using patented inventions without remuneration to the patentee, under the impression that the Crown was precluded from using them without his licence, was held ineffectual to control the true construction or true state of the law, which was that the Crown was not excluded from their use (*c*).

An universal law cannot receive different interpretations in different towns (*d*). A mere local usage cannot be invoked to construe a general enactment, even for the locality (*e*). A fortiori is this the case, when the local custom is manifestly at variance with the object of the Act; as, for instance, a custom for departing from the standard of weights and measures,

(*a*) R. *v.* Cutbush, LR. 2 QB. 373. See also the Duke of Buccleuch *v.* Metrop. B. of Works, LR. 5 Ex. 251.

(*b*) *Per* Lord Ellenborough in Isherwood *v.* Oldknow, 3 M. & S. 396.

(*c*) Feather *v.* R., 6 B. & S. 257, 35 LJ. QB. 200.

(*d*) *Per* Grose J. in R. *v.* Hogg, 1 TR. 728.

(*e*) R. *v.* Saltren, Cald. 444.

which the Legislature plainly desires to make obligatory on all and everywhere (*a*).

Usage, ancient and modern, has often been admitted to throw light on the construction of old deeds, charters, and other documents (*b*).

SECTION II.—CONSTRUCTION IMPOSED BY STATUTE.

When the Legislature puts a construction on an Act, a subsequent cognate enactment in the same terms would, *primâ facie*, be understood in the same sense. Thus, as the 125th section of the Bankrupt Act of 6 Geo. 4, which enacted that securities given by or for a bankrupt to creditors, as a consideration for signing the bankrupt's certificate, should be "void," was stated in the preamble of the 5 & 6 Will. 4, c. 41, to have had the effect of making such securities void even in the hands of innocent holders for value, and was modified so as to make them valid in such hands; it was considered, when the Act of Geo. 4 was repealed, and its 125th section was re-enacted in its original terms in the Bankrupt Act of 1849, that the renewed enactment ought to receive the construction which the preamble of the 5 & 6 Will. 4 had put on the

(*a*) Noble *v.* Durell, 3 TR. 271.

(*b*) See ex. gr. Withnell *v.* Gartham, 6 TR. 388; Doe *v.* Ries, 8 Bing. 181, *per* Tindal C. J.; Wadley *v.* Bayliss, 5 Taunt. 752; Beaufort *v.* Swansea, 3 Ex. 413; Newcastle *v.* Bradley, 2 E. & B. 427, 23 LJ. QB. 35.

earlier one (*a*). The expression "taxed cart," in a recent local Act, was held to mean a vehicle which had been defined as a taxed cart by the 43 Geo. 3, c. 161 (*b*).

Where it is to be gathered from a later Act, that the Legislature attached a certain meaning to certain words in an earlier cognate one, this would be taken as a legislative declaration of its meaning there (*c*).

So where an Act has received a judicial construction, and the Legislature uses the same words in a subsequent Act in pari materiâ, there is a presumption that they are used to express the meaning which had been judicially put on them; and unless there be something to rebut that presumption, the new statute is to be construed on the same principle as the old one (*d*).

But an Act of Parliament does not alter the law by merely betraying an erroneous opinion of it. For instance, the 7 Jac. 1, c. 12, which enacts that shop books shall not be evidence above a year before action, did not make them evidence within the year; though the enactment was obviously passed under the impression, not improbably confirmed by the practice

(*a*) Goldsmid *v.* Hampton, 5 CB. NS. 94, 27 LJ. CP. 286.

(*b*) Williams *v.* Lear, LR. 7 QB. 285, overruling Purdy *v.* Smith, E. & E. 511. See Ward *v.* Beck, 13 CB. NS. 668, 32 LJ. CP. 113.

(*c*) R. *v.* Smith, 4 TR. 419; Morris *v.* Mellor, 6 B. & C. 454.

(*d*) *Per* Blackburn J. in Jones *v.* Mersey Dock Co., 35 LJ. MC. 15. Comp. the remarks of Byles J. in St. Losky *v.* Green, 9 CB. NS. 370, 30 LJ. CP. 21; and see ex. gr. Sturgis *v.* Darrell, 4 H. & N. 622, 28 LJ. Ex. 366, sup. p. 234.

of the Courts in those days, that they were admissible in evidence (*a*). An Act which provided that no more than sixpence in the pound should be paid for appraisement in cases of distress for rent, "whether "by one broker or more," did not alter the earlier law which required that goods distrained for rent should be appraised by two appraisers (*b*).

Many enclosure Acts were passed under the once prevalent opinion that the lord of a manor had a seignorial right of sporting over every part of the manor, whereas he had only a right of sporting over the waste as incident to the ownership of the land (*c*). When those Acts divested the freehold out of him, and vested it in the tenants, among whom they allotted it, but reserved to the lord all the rights of sporting which had been enjoyed by himself and his predecessors, a conflict of opinion arose as to whether this reservation entitled the lord to sport over the enclosures (*d*).

The 7 & 8 Vict. c. 29, in reciting that the 9 Geo. 4, c. 69, which punishes night poaching on "land, "whether open or enclosed," had been evaded by the destruction of game, not on open and enclosed lands as described in that Act, but upon public roads and

(*a*) Pitman *v.* Maddox, 2 Salk. 690.

(*b*) Allen *v.* Flicker, 10 A. & E. 640.

(*c*) Pickering *v.* Noyes, 4 B. & C. 639.

(*d*) See Greathead *v.* Morley, 3 M. & Gr. 139; Graham *v.* Ewart, 7 HL. 331; Sowerby *v.* Smith, LR. 9 CP. 524.

paths, and in making provision to meet the evasion, proceeded on an erroneous view of the law; for public roads and paths are "lands" within the meaning of the earlier Act, and the person who kills game while standing on them is a trespasser, not being there in the exercise of the right of way which alone justified his presence there, but for the purpose of unlawfully seeking game (*a*).

A mere recital in an Act, whether of fact or of law, is not conclusive, but courts are at liberty to consider the fact or the law to be different from the statement in the recital; unless, indeed, it be clear that the Legislature intended that the law should be, or the fact should be, regarded as recited (*b*). The 36 & 37 Vict. c. 60, s. 3, for instance, would hardly, by reciting that "an accessory after the fact" is "by "English law liable to be punished as if he were the "principal offender," be understood as making so important a change of the law.

In all these cases, no inference necessarily arose that the Legislature intended to alter the law, and to make it as it was alleged to be. A different effect, however, would be given to an Act which showed, whether by recital or enactment, that it intended to effect a change. If the mistake is manifested in words competent to make the law in future, there is no

(*a*) R. *v.* Pratt, 4 E. & B. 860; Mayhew *v.* Wardley, 14 CB. NS. 550.

(*b*) *Re* Haughton, 1 E. & B. 516.

principle which can deny them this effect (*a*). Such was the effect of the 4 & 5 Vict. c. 48, which enacted that municipal corporations should be rateable in respect of their property, as though it were not corporate property; but that such property, when lying wholly within a borough, the poor of which were relieved by one entire poor rate, should continue exempt from rateability "as if the Act had not "passed." When the Act was passed, the general opinion was that such property was exempt, but later decisions settled that it was not. It was held that the above enactment exempted them, notwithstanding the final words; which were considered as not conveying a different intention (*b*).

An Act which, after empowering the parishioners to elect an assistant overseer, provided that this power should cease where an assistant overseer had been appointed by the Poor Law Commissioners, (who had previously no power to make such an appointment,) and while their order of appointment remained in force, would seem, if not to give them that power by implication, at least to prevent the parishioners from appointing, as long as the appointment of the Poor Law Board remained unrescinded (*c*).

A statute of the United States enacted that the district court should, in certain cases, have concur-

(*a*) *Per* Cur. in P. M. Genl. *v.* Early, 12 Wheat. 148.

(*b*) R. *v.* Oldham, LR. 3 QB. 474.

(*c*) R. *v.* Greene, 21 LJ. QB. 137, 17 QB. 793.

rent jurisdiction with the state and circuit courts, as if (contrary to the fact) the district court had not already, and the circuit court had, jurisdiction. But though the language plainly indicated only the opinion that the jurisdiction existed in the circuit court, and not an intention to confer it, this effect was nevertheless given to the Act, to prevent its being inoperative; and to carry out what was the obvious object of the Act (*a*). The district court could not have had concurrent jurisdiction with the circuit court, unless the latter could take cognizance of the same suits.

SECTION III.—CONSTRUCTION OF WORDS IN BONAM PARTEM—EFFECT OF MULTIPLICITY OF WORDS—OF VARIATION OF LANGUAGE.

It is said, and in a certain sense truly, that words must be taken in a lawful and rightful sense. When an Act, for instance, gives a certain efficacy to a fine levied of land, it meant only a fine lawfully levied (*b*). So, an Act which requires the payment of rates as a condition precedent to the exercise of the franchise, would not be construed as excluding from it a person who refused to pay a rate which was illegal, though so far valid that it had not been quashed or appealed

(*a*) P. M. Genl. *v.* Early, 12 Wheat. 136.

(*b*) Co. Litt. 318b.

against (*a*). A covenant by a tenant to pay all parliamentary taxes, is construed to include only such as he may lawfully pay, but not the landlord's property tax, which it would be illegal for him to engage to pay (*b*).

Where words have each a separate and distinct meaning, its exact sense ought, *primâ facie*, to be given to each. But the use of tautologous expressions is not uncommon in statutes. Thus, an Act which makes it felony "falsely to make, alter, forge, or "counterfeit" a bill of exchange, gains little in strength or precision by using four words where one would have sufficed. It cannot be doubted that he who falsely makes, or alters, or counterfeits a bill, is guilty of forging it (*c*).

It has been justly remarked that, when precision is required, no safer rule can be followed than always to call the same thing by the same name (*d*). It is, at all events, reasonable to presume that the same meaning is intended for the same expression in every part of the Act (*e*). For instance, in the Act which gives the Court of Admiralty jurisdiction over all claims for "damage" done by a ship, it was held that the same

(*a*) R. *v.* Windsor (Mayor of), LR. 7 QB. 908.

(*b*) Gaskell *v.* King, 11 East, 165. See Edgeware Highway Board *v.* Harrow Gas Co., L.R. 10 QB. 92; Owen *v.* Body, 5 A. & E. 28.

(*c*) Teague's Case, R. & R. 33.

(*d*) Sir G. C. Lewis, Obs. and Reas. in Polit., vol. i. p. 91.

(*e*) Courtauld *v.* Legh, LR. 4 Ex. 30, *per* Cleasby B.; R. *v.* Poor Law Commrs., 6 A. & E. 68, *per* Lord Denman.

meaning had been intended for the word "damage" throughout the whole body of law relating to the subject (*a*).

But this presumption yields readily to other considerations, and is but an uncertain guide. In the enactment which makes it felony for any one "being "married" to "marry" again while the former marriage is in force, the same word has obviously two different meanings, necessarily implying the validity of the marriage in the one case, and as necessarily excluding it in the other (*b*). In the 12 & 13 Vict. c. 96, which makes any "person" in a British possession charged with any crime at sea liable to be tried in the colony, and provides that where the offence is murder or manslaughter of any "person" who dies in the colony of an injury feloniously inflicted at sea, the offence shall be considered as having been committed wholly at sea; the word "person" would include any human being, when relating to the sufferer, but would, as regards the offender, include only those persons who, on general principles of law, are subject to the jurisdiction of our Legislature, and responsible for their acts (*c*).

The case of Forth *v.* Chapman (*d*) furnishes a well-known instance of a single passage in a will

(*a*) Smith *v.* Brown, LR. 6 QB. 729, sup. 28.

(*b*) R. *v.* Allen, LR. 1 CC. 367.

(*c*) See U. S. *v.* Palmer, 3 Wheat. 631; and see R. *v.* Lewis, Dears. C. & B. 182, and other cases cited, sup. p. 123.

(*d*) 1 P. Wms. 663.

receiving two different interpretations, according to the nature of the property to which it was applied; a devise of freehold and leasehold property to a person, with remainder over if he died "without "issue," being construed to mean, as regarded the freehold, failure of issue at any future time, but as regarded the leasehold, a failure of issue at the death of the devisee. But this construction, which Lord Kenyon (*a*) considered hardly illustrative of the saying that lex plus laudatur quando ratione probatur, and which has since been set aside by the Wills Act (*b*), was attributable to the different principles of interpretation adopted by the common law and ecclesiastical courts, under whose cognizance wills of the two kinds of property respectively and exclusively fell (*c*).

So, it seems to have been once thought that in the Act of Anne, which gave the loser at play a right to recover by action his losses above 10*l.*, when lost at a single sitting, and gave an informer the right to recover them, and treble value besides, if the loser did not take proceedings in time, the expression "a "single sitting" might receive two different meanings, according as the plaintiff was the loser, or an informer; that is, that a sitting suspended for dinner should be held single and continuous, when the loser sued, but broken into two sittings, when the action was brought

(*a*) 3 TR. 146. (*b*) 1 & 2 Vict. c. 26, s. 29.
(*c*) Fearne Cont. Rem. 476.

by the informer; on the ground that in the one case the act was remedial, and therefore entitled to a beneficial construction, while in the latter it was penal, and therefore was to be construed strictly (*a*).

The 13 Eliz. c. 5, which declared leases of church property for more than twenty-one years or three lives "utterly void and of none effect, to all intents, con-"structions, and purposes," has received two different constructions, according as the lessor was an ecclesiastical corporation with or without a head (*b*).

This presumption, however, is of no great force. Whether it be for the purpose of improving the graces of style, and of avoiding the repeated use of the same words (*c*), or from the circumstance that Acts are often compiled from different sources, or that they undergo, in their progress through Parliament, alterations and additions from various hands, and thus present the variety of style and language of various authors, certain it is that they are frequently found framed in varied phraseology, without conveying a different intention. It was held that there is no difference between a "stream" and a "river" in the 24 & 25 Vict. c. 109, ss. 27, 28 (*d*); nor between

(*a*) Bones *v.* Booth, 2 W. Bl. 1226.

(*b*) Sup. 116. See also Rein *v.* Lane, sup. p. 260.

(*c*) *Per* Blackburn J. in LR. 1 QB. 457, and Lord Abinger in R. *v.* Frost, 9 C. & P. 106.

(*d*) Rolle *v.* Whyte, LR. 3 QB. 305.

"ordinary luggage" in an Act, and "personal lug-"gage" in a bye-law (*a*). To "turn cattle loose" on a public thoroughfare, which is subject to a penalty by the Police Act, 2 & 3 Vict. c. 37, s. 54, was held substantially identical with "leaving cattle" there "with-"out a keeper," contrary to the Highway Act, 5 & 6 Will. 4, c. 50, s. 74 (*b*); and the definition in the 6 & 7 Vict. c. 86, of a hackney carriage, as a carriage plying for hire in "any public place," was held identical in meaning with the earlier Act 1 & 2 Will. 4, c. 22, which defined it as plying for hire in any "street or road" (*c*).

An Act which enacted that "it shall and may be "lawful" for a justice to hear a certain class of cases under 50*l.*, and that penalties above that sum "shall" (*d*) be sued for in the Superior Courts, was held equally imperative in both cases, even though the effect was to oust the jurisdiction of the Superior Courts in the former (*e*). So, though one section of the 3 Geo. 4, c. 39, made a warrant of attorney to confess judgment, if not filed within twenty-one days, "fraudulent and void against the assignees" in bankruptcy of the debtor, and another made it "void to all

(*a*) Hudston *v.* Midland R. Co., LR. 4 QB. 366.

(*b*) Sherborn *v.* Wells, 32 LJ. MC. 179, 3 B. & S. 784.

(*c*) Skinner *v.* Usher, LR. 7 QB. 423; and see Curtis *v.* Embery, LR. 7 Ex. 369.

(*d*) See ex. gr. Haldane *v.* Beauclerk, 3 Ex. 658; Montague *v.* Smith, 17 QB. 688, 21 LJ. QB. 73.

(*e*) Cates *v.* Knight, 3 TR. 442, sup. 108.

"intents and purposes," if the defeasance was not written on the same paper as the warrant, it was held, notwithstanding the dissimilarity of the language, that the latter section was not more extensive than the former, but made the warrant of attorney void only as against the assignees (*a*).

The 137th section of the Bankrupt Act of 1849, which made judges' orders given by consent by a "trader," null and void to "all intents and pur-"poses," unless filed, was held to have no more extensive meaning than the provision just cited of the 3 Geo. 4, c. 39. The word "trader," which is used in the same and the preceding sections, was held to be confined to traders who afterwards became bankrupt; though the word "bankrupt" was used in all the other sections relating to the subject. All of them, however, were prefaced by the preamble that they related to "transactions with the bankrupt" (*b*).

A statute which required witnesses before an election commission to answer self-criminating questions, and indemnified them from prosecution for the offences confessed, if the commissioners certified that they had answered the questions, was held not to differ substantially from an earlier one, which gave the indem-

(*a*) Morris *v.* Mellin, 6 B. & C. 446, 9 D. & R. 503; Bennett *v.* Daniel, 10 B. & C. 500; diss. Holroyd J. and Parke J.; and Rolfe B. in Bryan *v.* Child, 1 L. M. & P. 437. See also Myers *v.* Veitch, LR. 4 QB. 649, sup. 29; R. *v.* Tone, 1 B. & Ad. 561.

(*b*) Bryan *v.* Child, 1 L. M. & P. 429.

nity only when it was certified that the answers were true (*a*). The Court naturally shrank from inferring, from the mere dissimilarity of the terms of the two Acts, an intention in the later one to protect a witness who answered, indeed, in point of fact, but who answered falsely or contemptuously (*b*).

It has, indeed, been said that, generally, statutes in pari materiâ ought to receive an uniform construction, notwithstanding any slight variations of phrase, the object and intention being the same (*c*). And it has been frequently laid down in America, that the mere change of phraseology is not to be deemed to alter the law (*d*). It would be difficult, at the present time, to give countenance to the doubt whether an Act which made it felony to steal "horses," in the plural, applied to the stealing of one horse, in consequence of an earlier Act having made it felony to steal "any horse" in the singular (*e*). The general language of a statute which repealed one of limited operation, and re-enacted its provisions in an amended form, would be construed as equally limited in operation, unless an intention to extend it clearly appeared (*f*).

(*a*) Hickett *v.* Met. R. Co., LR. 2 HL. 207.

(*b*) R. *v.* Hulme, LR. 5 QB. 377, sup. See also Liverpool Borough Bank *v.* Turner, 2 De G. F. & J. 502, cited inf.

(*c*) *Per* Cur. in Murray *v.* E. I. Co., 5 B. & A. 215, referring to the Statutes of Limitations.

(*d*) Sedg. Interp. Stat. 234, 428.

(*e*) 2 Hale, 365, sup. 239.

(*f*) *Per* Cur. in Brown *v.* McLachlan, LR. 4 PC. 543.

As the same expression is presumed to be used in the same sense throughout an Act or series of cognate Acts, so a difference of language may be *primâ facie* regarded as indicative of a difference of meaning (*a*). Thus, where one section of the Adulteration of Food Act imposed a penalty for selling, as unadulterated, articles of food which were adulterated; and another provided that the seller of an article of food who, knowing that it was mixed with a foreign substance to increase its bulk or weight, did not declare the admixture to the purchaser, should be deemed to have sold an adulterated article; the former section would reach a seller who was ignorant of the adulteration; since, where knowledge was intended to be an element in an offence under the Act, the Legislature had conveyed its intention in express terms (*b*).

The 9 Geo. 4, c. 14, which admits of no acknowledgment of a debt to bar the Statute of Limitations, unless it be signed by "the party chargeable thereby," was held not satisfied by the signature of an agent, partly because other provisions spoke expressly of agents as well as of principals, and thus showed that the Legislature had not in its contemplation the maxim that qui facit per alium facit per se (*c*).

Where an Act recited and repealed an earlier one,

(*a*) *Per* Lord Tenterden in R. *v.* Great Bolton, 8 B. & C. 74.

(*b*) Fitzpatrick *v.* Kelly, LR. 8 QB. 337. See Pope *v.* Tearle and Roberts *v.* Egerton, 43 LJ. MC. 129 and 135.

(*c*) Hyde *v.* Johnson, 2 Bing. NC. 776.

which had authorised two justices, "whereof one to be "of the quorum," to remove any person "likely to be" chargeable to the parish, and enacted that no person should be removed until "actually" chargeable, when "two justices" (omitting all mention of either being on the quorum) might remove him; it was held that this qualification was not necessary under the later Act (*a*).

A man who sends his servants, or his dogs, on the land of another, would be, in law, as much a trespasser as if he had entered on the land in person (*b*); but an Act which imposed a penalty for committing a trespass "by entering or being" upon land, would be construed as limiting, by these superadded words, the nature of the trespass to a personal entrance (*c*).

The 59th section of the Pilot Act, 6 Geo. 4, c. 125, which exempts from compulsory pilotage any ship whatever which "is" within the limits of the port to which she belongs, was construed as exempting from compulsory pilotage a London vessel while within the port of London, though on a voyage from Bordeaux; but she would not have been exempted under the 379th section of the Merchant Shipping Act of 1854, which exempts ships "navigating" within the limits of the port to which they belong (*d*). In an Act (59

(*a*) R. *v.* Llangian, 32 LJ. MC. 225; diss. Cockburn, C. J.

(*b*) Baker *v.* Berkeley, 3 C. & P. 32; Dimmock *v.* Allenby, 7 Taunt. 489.

(*c*) R. *v.* Pratt, 4 E. & B. 860; and see Read *v.* Edwards, 17 CB. NS. 245.

(*d*) The Stettin, Br. & Lush. But see Genl. St. Nav. Co. *v.* Brit. & Colon. St. Nav. Co., LR. 4 Ex. 238.

Geo. 3, c. 50) which provided that no person should acquire a settlement in a parish by a forty days' residence in a tenement rented by him, unless, if a house, it was "held," and if land, it was "occupied" by him for a year, effect was given to the two different words as expressing different ideas, by holding that a house need not be "occupied" for the purpose of acquiring a settlement (*a*). It was observed that this was probably not really intended by the Legislature (*b*).

SECTION IV.—ASSOCIATED WORDS UNDERSTOOD IN A COMMON SENSE.

When two substantives are used together, one of which generically includes the other, it is obvious that the more general term is used in a limited sense, excluding the more specific one. Thus, though the words "cows," "sheep," and "horses," standing alone, comprehend heifers, lambs, and ponies respectively, they would be understood as excluding them if the latter words were coupled with them (*c*). The word "land," which, in its wide legal acceptation, includes buildings standing upon it, would be understood as

(*a*) R. *v.* North Collingham, 1 B. & C. 578; R. *v.* Great Bolton, 8 B. & C. 71.

(*b*) *Per* Best, J., in R. *v.* N. Collingham, ubi sup. See other illustrations in Lawrence *v.* King, and Exp. Goreley, sup. 32; West *v.* Francis, 5 B. & A. 737; Cornill *v.* Hudson, 8 E. & B. 429; Wiley *v.* Crawford, 1 E. B. & E. 253.

(*c*) R. *v.* Cooke, 2 East, PC. 617; R. *v.* Loom, 1 Moo. CC. 160.

excluding them if it was coupled with the word "buildings" (*a*). In the 43 Eliz. c. 43, which imposes a poor rate on the occupiers of "lands," houses, tithes, and "coal-mines," the same word is similarly limited in meaning as not including mines (*b*). The mention of one kind of mine shows that the Legislature understood the word "land," which in law comprehends all mines, as not including any.

In the same way, although the word "person," in the abstract, includes corporations (*c*), the Statute of Uses, which enacts that when a "person" stands seised of tenements to the use of another "person or body "corporate," the latter "person or body" shall be deemed to be seised of them, is understood as using the word "person" in the former part of the sentence as not including a body corporate. Consequently, the statute does not apply where the legal seisin is in a corporation (*d*). The same construction was given, for the same reason, to the same word in the Mortmain Act, 9 Geo. 2, c. 36 (*e*).

When two or more words, susceptible of analogous meaning, are coupled together, noscuntur a sociis; they

(*a*) See ex. gr. Dewhurst *v.* Fielding, 7 M. & Gr. 182; R. *v.* Midland R. Co. 4 E. & B. 958; Peto *v.* West Ham, 2 E. & E. 144, 28 LJ. MC. 240.

(*b*) Lead Smelting Co. *v.* Richardson, 3 Burr. 1341; R. *v.* Sedgley, 2 B. & Ad. 65; R. *v.* Cunningham, 5 East, 478.

(*c*) 2 Inst. 722.

(*d*) Bac. Reading Stat. Uses, 43, 57.

(*e*) Walker *v.* Richardson, 2 M. & W. 883.

are understood to be used in their cognate sense. They take, as it were, their colour from each other; or the more general is restricted to a sense analogous to the less general. The expression, for instance, of "places of public resort," assumes a very different meaning when coupled with "roads and streets," from that which it would have if the accompanying expression was "houses" (*a*). An Act which exempted "magnates and noblemen" from tithes, was held, on this ground, not to extend to an ecclesiastical magnate, such as a dean, but to apply only to magnates of a "noble" kind (*b*).

In the same way, the 17th section of the Statute of Frauds, which requires that contracts for the sale of "goods, wares, and merchandise" for ten pounds or upwards, shall be in writing, and the Factors Act, 5 & 6 Vict. c. 39, which protects certain dealings of agents entrusted with the documents of title of "goods and "merchandise," do not extend to shares or stock in companies (*c*), or to the certificates of them (*d*). In each of these cases, the meaning of the more general

(*a*) See ex. gr. R. *v.* Jones, 21 LJ. MC. 113; R. *v.* Brown, Id. 116; Davys *v.* Douglas, 28 Id. 193; Sewell *v.* Taylor, 29 Id. 50; Case *v.* Storey, LR. 4 Ex. 319; Skinner *v.* Usher, LR. 7 QB. 423. See also R. *v.* Charlesworth, 2 L. M. & P. 117.

(*b*) Warden *v.* Dean of St. Paul's, 4 Price, 65.

(*c*) Tempest *v.* Kilner, 3 CB. 249; Bowlby *v.* Bell, Id. 284; Humble *v.* Mitchell, 11 A. & E. 205; Heseltine *v.* Siggers, 1 Ex. 856.

(*d*) Freeman *v.* Appleyard, 32 LJ. Ex. 175.

word is in a measure derived from, or at least limited by, the more specific one with which it is associated.

The Bankrupt Acts, which make a fraudulent "gift, "delivery, or transfer" of property an act of bankruptcy, includes only such deliveries or transfers as are of the nature of a gift; that is, such only as alter the ownership of the property; but it does not include a delivery to a bailee for safe custody (*a*).

The receipt of "parochial relief or other alms," which disqualifies for the municipal franchise (5 & 6 Will. 4, c. 76, s. 9), is confined to other parochial alms, and does not include alms received from a charitable institution (*b*). The 22 & 23 Car. 2, c. 25, which empowered lords of "manors and other royalties" to grant a deputation to a gamekeeper, was limited to lords of such royalties as are of the same nature as manors, and did not, therefore, extend to the lord of a hundred (*c*). An Act (23 & 24 Vict.) which prohibits the sale of articles, as "pure or unadulterated," which are in fact adulterated or not pure, would be understood as using the latter expression as closely analogous to the former; so that milk from which the cream had been extracted would probably not fall within the designation of "not pure." The ordinary marine policy which insures against arrest of "kings,

(*a*) Cotton *v.* James, Moo. & Mal. 273; Bitt *v.* Beeston, LR. 4 Ex. 159.

(*b*) R. *v.* Lichfield, 2 QB. 693.

(*c*) Ailesbury *v.* Pattison, Doug. 28. See also Evans *v.* Stevens, 4 TR. 224, 459.

"princes, and people," refers, under the last word, not to any collection of persons, but to the governing power of a country not included in the other terms with which it is associated (*a*).

On the same principle, an Act which prohibits the "taking or destroying" the spawn of fish, would not include a "taking" of spawn for the purpose of removing it to another bed; for the word "destroying," with which it is associated, indicates that the kind of taking which it is prohibited is dishonest or mischievous (*b*). And in an Act which made it penal to "take or kill" fish without the leave of the owners of the fishery, the same kind of "taking" was similarly held to have been intended (*c*). An Act which prohibits the "having or keeping" gunpowder, does not apply to a person who "has" gunpowder for a merely temporary purpose, as a carrier; the kind of "having" intended by the Act being explained by the word "keeping," with which it is associated (*d*). So, where an Act punishes the "having or conveying" anything suspected of being stolen and not satisfactorily accounted for; the former expression is limited by the latter, and does not, therefore, apply to the possession of a house (*e*). An Act which made it felony to "cast

(*a*) Nesbitt *v.* Lushington, 4 TR. 783. See also Davidson *v.* Burnand, LR. 4 CP. 120.

(*b*) Bridger *v.* Richardson, 2 M. & S. 568.

(*c*) R. *v.* Mallinson, 2 Burr. 679.

(*d*) Biggs *v.* Mitchell, 2 B. & S. 523, 31 LJ. MC. 631; R. *v.* Strugnell, LR. 1 QB. 931.

(*e*) Hadley *v.* Perks, LR. 1 QB. 444.

"away or destroy" a ship, was held not to apply to a case where the ship was run aground or stranded upon a rock, but was afterwards got off in a condition capable of being refitted (*a*). This rule was applied to the construction of the repealed Act, 1 Vict. c. 85, which made it felony "to shoot, cut, stab, or wound;" for the latter term was held to be restricted, by the verbs which preceded it, to injuries inflicted by an instrument; and consequently to bite off a finger or a nose, or to burn the face with vitriol, was not to wound within the meaning of the Act (*b*).

One phrase or clause, in the same way, sometimes materially limits the effect of another with which it is similarly associated. Thus, an Act which disgavelled lands "to all intents and purposes," and then went on to make them "descendible as lands at common law," was held to disgavel them only for the purposes of descent (*c*). The section of the Annuity Act, 17 Geo. 3, c. 26, which excepts from the general provisions of the enactment any "voluntary annuity granted without regard to pecuniary consideration," was construed as using the word "voluntary," not in its usual legal sense, as without consideration, but as without pecuniary consideration (*d*).

(*a*) De Londo's Case, 2 East, P. C. 1098.

(*b*) R. *v.* Harris, 7 C. & P. 446; R. *v.* Stevens, 1 Moo. CC. 409; R. *v.* Murrow, Id. 456; Jenning's Case, 2 Lew. 130.

(*c*) Wiseman *v.* Cotton, 1 Lev. 80.

(*d*) Crespigny *v.* Wittenoom, 4 TR. 790.

SECTION V.—GENERIC WORDS FOLLOWING MORE SPECIFIC.

It is, however, the use of a general word following one or more less general terms ejusdem generis, which affords the most frequent illustration of the rule under consideration. Generi per speciem derogatur. In the abstract, general words, like all others, receive their full and natural meaning. If a right of hunting, shooting, and fishing is granted, all things generally hunted, shot, and fished are included (*a*). The 3 & 4 Will. 4, c. 42, s. 3, which limits the time for suing "upon any bond or "other specialty," comprehends under the last expression, every kind of specialty, including a statute (*b*). In such cases, the general principle applies, that the terms are to receive their plain and ordinary meaning; and Courts are not at liberty to impose on them limitations not called for by the sense, or the objects or mischief of the enactment (*c*).

But the general word which follows particular and specific words of the same nature as itself, takes its meaning from them, and is presumed to be restricted to the same genus as those words (*d*); or, in other words, as comprehending only things of the same kind as

(*a*) Jeffreys *v.* Evans, 19 CB. NS. 264, 34 LJ. CP. 261.

(*b*) Cork and Bandon R. Co. *v.* Goode, 13 CB. 836.

(*c*) *Per* Cur. in U. S. *v.* Coombes, 12 Peters, 80.

(*d*) See *per* Willes, J., in Fenwick *v.* Schmaltz, LR. 3 CP. 315.

those designated by them; unless, of course, there be something to show that a wider sense was intended.

Thus, the Sunday Act, 29 Car. 2, c. 7, which enacts that "no tradesman, artificer, workman, labourer, or "other person whatsoever, shall do or exercise any "labour, business, or work of their ordinary callings "upon the Lord's Day," has been held not to include a coach proprietor (*a*), or a farmer (*b*), or, no doubt, an attorney (*c*), the word "person" being confined to those of callings like those specified by the preceding words. The 20 Geo. 2, c. 19, which empowers justices to determine differences between masters and "servants "in husbandry, artificers, handicraftsmen," and persons in some other specific employments, and "all other "labourers," does not include a domestic servant (*d*), or a man employed to take care of goods seized under a writ (*e*); for though in the abstract they may be "labourers," their employments have no analogy with those specified. It would include, however, a man who contracted to dig a well by job work (*f*).

The Metropolitan Building Act of 1855, which entitles a district surveyor "or other person," to a month's notice of action for anything done under the

(*a*) Sandiman *v.* Breach, 7 B. & C. 96.

(*b*) R. *v.* Cleworth, 4 B. & S. 927; S. C. nom. R. *v.* Silvester, 33 LJ. MC. 79.

(*c*) Peate *v.* Dicken, 1 C. M. & R. 422.

(*d*) Kitchen *v.* Shaw, 6 A. & E. 729.

(*e*) Bramwell *v.* Penneck, 7 B. & C. 536.

(*f*) Lowther *v.* Radnor, 8 East, 113.

Act, was held, on this principle, not to give that privilege to every person sued, but to give it only to persons ejusdem generis with a district surveyor; that is, having an official duty (*a*). An Act which made it felony to break and enter into a "dwelling, shop, "warehouse, or counting-house," would not include a work-shop, but only that kind of shop which had some analogy with warehouse; that is, one for the sale of goods (*b*).

The 11 Geo. 2, c. 19, which authorises the distress for rent of "corn, grass, or other product" growing on the demised lands, includes only products similar to grass and corn, but not young trees, which, though unquestionably products of the land, are of a different character from the products specified by the earlier terms (*c*). For the same reason, young trees are not included in the Act which punishes the stealing of "any plant, root, fruit, or vegetable production grow-"ing in a garden, orchard, nursery-ground, hot-house, "or conservatory" (*d*).

An Act which prohibited playing or betting in the streets "at or with any table or instrument of "gaming," would not include, under the last general words, half-pence used for tossing for money (*e*). A bye-

(*a*) Williams *v.* Golding, LR. 1 CP. 69.

(*b*) R. *v.* Saunders, 9 C. & P. 79.

(*c*) Clark *v.* Gaskarth, 8 Taunt. 431.

(*d*) R. *v.* Hodges, 1 Moo. & M. 341.

(*e*) Watson *v.* Martin, 34 LJ. MC. 50, rectified by 31 & 32 Vict. c. 52, s. 3.

law which imposed a penalty for causing an obstruction in the street in various specified ways, all of a temporary character, or otherwise caused or committed "any other obstruction, nuisance, or annoyance" in any of the streets, was held not to include, under the latter words, any obstruction which was not of a temporary character (*a*).

So, a bill of sale by the yearly tenant of a dwelling-house, of all the household goods, furniture, and other household effects in and about the dwelling-house, "and all other the personal estate whatsoever," of the assignor, was held not to pass his term or interest in the house (*b*). So, a will, which after enumerating, in a bequest, furniture, plate, linen, china, and pictures, added "all other goods, chattels, and effects which shall "be in the house" at the time of the testator's death, did not include a sum of money then in the house (*c*).

An Act which gives a vote to the occupier of a "house, warehouse, counting-house, shop, or "other building," includes, in the latter term, only buildings which, like those specifically mentioned, are of some permanence and utility, and contribute to the beneficial occupation of the land, increasing thereby its value (*d*). The words "tenements and

(*a*) R. *v.* Dickenson, 7 E. & B. 831, 26 LJ. MC. 204.

(*b*) Harrison *v.* Blackburn, 34 LJ. CP. 109; comp. Ringer *v.* Cann, 3 M. & W. 343.

(*c*) Gibbs *v.* Lawrence, 30 LJ. Ch. 170.

(*d*) Powell *v.* Boraston, 18 CB. NS. 175, 34 LJ. CP. 73; and see Morish *v.* Harris, LR. 1 CP. 155.

"hereditaments," which, in their technical sense, embrace every species of right connected with land, such as rents, rights of common, seignorial rights, &c., have been confined to habitable structures, when coupled with and following such words as "houses, warehouses, and shops" (*a*). Where an Act authorised the police to enter any house or room used for stage plays, and imposed a penalty for keeping any house or other "tenement" as an unlicensed theatre; it was held that the word "tenement" was confined in meaning to something of the same character as "house" or "room;" and so did not include a portable booth, consisting of two waggons joined together, and used as a theatre by strolling players (*b*).

The 3 & 4 Will. 4, c. 90, s. 33, which enacted that the owners of "houses, buildings, and property other "than land," rateable to the poor, should be rated at thrice the rate imposed on the owners of land, was held confined to that kind of "property other than "land," which was ejusdem generis with "houses and "buildings," and that a canal, and its towing-paths, and dry dock lined with masonry, which were its accessories, were not comprised in the expression, but were rateable as land (*c*). On the same principle, the Companies Act of 1862, which provides (sect. 79)

(*a*) R. *v.* Manchester Waterworks Co., 1 B. & C. 630; R. *v.* East London Waterworks Co., 17 QB. 512, 21 LJ. MC. 49.

(*b*) Fredericks *v.* Howie, 1 H. & C. 381, 31 LJ. MC. 249.

(*c*) R. *v.* Neath, LR. 6 QB. 707.

that companies may be wound up by the Court of Chancery when the company passes a resolution in favour of that course, or does not begin business within a year, or its members are reduced to less than seven, or when the Court thinks a winding-up "just "and equitable," empowers the Court, by these last general words, to wind up only when it is just and equitable, on grounds analogous to those precedingly stated (*a*).

But this principle is abandoned when there are adequate grounds to show that the general word was not used in the limited order of ideas to which its predecessors belong. Thus, where an inspector of nuisances was authorised to inspect articles of food deposited in any "place" for sale, and a penalty was imposed on persons who prevented him from entering any "slaughter-house, shop, building, market, or other "place," where any carcase was deposited for sale; it was held that the latter words were not confined to places ejusdem generis with those which preceded it. The earlier authority to enter "any place" obviously required that the same word should receive an equally extensive meaning in the subsequent passage (*b*). The 103rd section of the Public Health

(*a*) Spackman's Case, 1 McN. & G. 170; *Re* Anglo-Greek Steam Co. LR. 2 Eq. 1.

(*b*) Young *v.* Gratridge, LR. 4 QB. 166. See also Harris *v.* Jenns, 30 LJ. MC. 183, 9 CB. NS. 152.

Act of 1848, which imposes a penalty for making any "sewer, drain, privy, cesspool, ashpit, building, or "other work, contrary to the provisions of the "Act," would include, under the word "building," not only constructions of a character similar to those previously mentioned, but also dwelling-houses (*a*).

Further, the principle in question applies only where the specific words are all of the same nature. Where they are of a different nature, the meaning of the general word remains unaffected by its connection with them. Thus, where an Act made it penal to convey to a prisoner, in order to facilitate his escape, "any mask, dress, or disguise, or any letter, or any "other article or thing," it was held that the last general terms were to be understood in their primary and wide meaning, and as including any article or thing whatsoever which could in any manner facilitate the escape of a prisoner, such as a crowbar (*b*). Here, the several particular words "disguise" and "letter," exhausted whole genera; and the last general words must be understood, therefore, as referred to other genera.

The meaning to be attached to a general word, coupled with more specific expressions, may be controlled by other considerations. Thus, the 17 Geo. 3, c. 56, which, after reciting that stolen materials used

(*a*) Pearson *v.* Kingston, 3 H. & C. 921, 35 LJ. MC. 44.

(*b*) R. *v.* Payne, LR. 1 CC. 27.

in certain manufactures were often known to be concealed in the possession of persons who had received them with guilty knowledge, and that the discovery and conviction of the offenders was in consequence difficult, proceeded to authorise justices to issue search warrants for purloined materials suspected to be concealed "in any dwelling-house, out-house, yard, gar-"den, or other place," was held to include, under the general word "place," a warehouse which was a mile and a half from the dwelling-house; though all the places specifically enumerated were such only as belong, or are immediately adjacent to a dwelling-house (*a*). Though such a warehouse would probably not be usually considered as ejusdem generis with a "dwelling-house," coupled with its enumerated dependencies, it was reasonable, having regard to the general object of the statute, to think that the warehouse was within the contemplation of the Legislature, as it was a very likely place for the concealment against which the enactment was directed; and a narrower construction was more likely to defeat, than promote the object of the Legislature. The requirement of the Municipal Corporations Act, 5 & 6 Will. 4, c. 76, s. 32, to the effect that voting papers shall be signed by the voter, and shall state the name of the "street, lane, or place," in which the property is situated in respect of which he claims to vote, was considered satisfied by a statement of the parish where the property lay, the object

(*a*) R. *v.* Edmundson, 2 E. & E. 77, 28 LJ. MC. 213.

of the provision being, apparently, the identification of the voter (*a*).

Several decisions on a recent enactment are instructive examples of the application of the above-mentioned rules, as to the effect of words of analogous meaning on each other, and of specific words on the more general one, which closes the enumeration of them; as well as of their subordination to the more general principle of gathering the intention from a review of the whole enactment, and giving effect to its paramount object. The 16 & 17 Vict. c. 119, after reciting that a kind of gaming had lately sprung up, to the demoralisation of improvident persons, by opening places called betting-houses or offices, enacts, for the better suppression of them, that any person who, being "the owner or occupier" of "any house, office, "room, or place," should "open, keep, or use," or "knowingly permit" it to be used, or use it for the purposes of betting, should be liable to a penalty of 50*l.*, and to an action for the recovery of any deposit made with him in respect of the bet. The Court of Common Pleas held that a man who habitually resorted to a certain spot under a tree in Hyde Park, and there made bets, occupied a "place" within the meaning of the Act. Although that general word was used with specific ones which involved the idea

(*a*) *Per* Lord Campbell and Crompton, J., in R. *v.* Spratley, 25 LJ. QB. 257, 6 E. & B. 263. See Lowther *v.* Bentinck, LR. 19 Eq. 166.

of structure, the mischief aimed at, which was to prevent skilled persons using a well-known place for inducing improvident persons to bet, was equally great, whether under a tree or in a room (*a*). This decision was overruled by the Exchequer Chamber on the ground, chiefly, that the defendant could not be said to be the "occupier" of the place; as that expression derived a meaning from the one with which it was coupled, which implied some legal and exclusive title to the place (*b*). But a temporary wooden structure, erected on a piece of ground rented by the person who used it for betting purposes, though unroofed and not fixed to the soil, was afterwards held to be a "place" within the Act (*c*); and in another case a man who carried on the same business, standing on a stool sheltered under a large umbrella, was held to be the "occupier of a place" within the Act; as he had in fact appropriated it for his proceedings, though he paid no rent and had no greater right to stand on the spot than any others of the public who were admitted (*d*). In another case a piece of enclosed land of about four acres was considered a "place" within the Act. The occupier of it, too, was held to have knowingly permitted it to be used for the purposes of betting within the Act, by admitting to it the public on payment of money to

(*a*) Doggett *v.* Catterns, 34 LJ. CP. 46, 17 CB. NS. 669.

(*b*) Id. 19 CB. NS. 765, 34 LJ. CP. 159.

(*c*) Shaw *v.* Morley, LR. 3 Ex. 137.

(*d*) Bows *v.* Fenwick, LR. 9 CP. 339.

witness a pigeon match and foot race; as some of the persons who entered carried on the business of betting on the matches, and there was reason to justify the conclusion that he knew that the persons so admitted would do so (*a*).

Analogous to the rules above considered is another, that when words descriptive of the rank of persons or things are used in a descending order according to rank, the general words superadded to them do not include persons or things of a higher rank or importance than the highest named, if there be any lower species to which they can apply. In such a case, the general word is taken not as generic, but as including only what is lower in the genus than the lowest specified. Thus, the 13 Eliz. c. 10, s. 3, which avoided conveyances by masters and fellows of colleges, deans and chapters of cathedrals, parsons, vicars, and "others having any spiritual or ecclesiastical living," would not include bishops (*b*).

The 2 Westm. c. 47, which prohibited salmon-fishing from Lady-day to St. Martin's, in "the waters "of the Humber, Owse, Trent, Done, Arre, Derewent, "Wherfe, Nid, Yore, Swale, Tese, Tine, Eden, and "all other waters wherein salmons be taken," was considered as including, in the final general expression,

(*a*) Eastwood *v.* Miller, LR. 9 QB. 440. See Haigh *v.* Sheffield, LR. 10 QB. 102; 44 LJ. MC. 17.

(*b*) The Abp. of Canterbury's Case, 2 Rep. 46b., 2 Hawk. c. 27, s. 14; Copland *v.* Powell, 1 Bing. 373.

only rivers inferior to those enumerated, and therefore as not comprising nobile illud flumen, the Thames (*a*). An Act which punished cruelty to any "horse, mare, "gelding, mule, ass, ox, cow, heifer, sheep, or other "cattle," was held not to include a bull (*b*).

The statute of Marlbridge, 52 Hen. 3, c. 29, also, which gave a right of action in certain cases to "abbots, priors, and other prelates of the Church," did not, according to Lord Coke, include bishops; because, among other reasons, the bishop is of a higher degree than an abbot (*c*). But it may be presumed that there were prelates of a lower degree than abbots and priors, otherwise the generic expression would have been without effect, if so construed; in which case the rule in question would be rejected, and the general term would include the higher denominations (*d*).

It was, indeed, once thought that in the 14 Geo. 2, c. 6, which made it a capital felony to steal sheep or "other cattle," this last expression was "much too "loose" to include any other cattle than those already specified, viz., sheep; but this extreme strictness of construction is attributed to the excessive severity of the law in question (*e*).

A statute which spoke of indictments before justices

(*a*) 2 Inst. 478.
(*b*) Exp. Hill, 3 C. & P. 225.
(*c*) 2 Inst. 151, 457, 478.
(*d*) 2 Inst. 137.
(*e*) 1 Bl. Comm. 88. Comp. Child *v.* Hearne, LR. 9 Ex. 176.

of the peace and "others having power to take indict-"ments" was understood, on the general ground under consideration, as not applying to the Superior Courts (*a*). But the 11 & 12 Vict. c. 42, which authorises justices of the peace to inquire into indictable offences committed on the high seas or abroad, and to bind the witnesses to appear at the next "court of oyer and terminer, or "jail delivery, or superior court of a County Palatine, "or the Quarter Sessions," would authorise a justice to hold an inquiry into an offence committed by a Colonial Governor in his colony, which is triable by the Queen's Bench. That court, was included in the words, "court of oyer and terminer" (*b*).

SECTION VI.—MEANING OF SOME PARTICULAR EXPRESSIONS.

It may be convenient to mention, in conclusion, the peculiar meaning in which a few words and expressions in frequent use in statutes are, in general, understood.

It has been enacted that in statutes passed after 1850, words importing the masculine gender include females, the singular includes the plural, and the plural the singular, unless the contrary is expressly provided. The word "county" means also county of a town or of a city, unless such extended meaning is expressly

(*a*) 2 Rep. 46 b. (*b*) R. *v.* Eyre, LR. 3 QB. 487.

excluded by words. The word "land" includes messuages, tenements, and hereditaments, houses, and buildings of any tenure, unless there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure; and the words "oath," "swear," and "affidavit," include affirmation, declaration, affirming and declaring, in the case of persons by law allowed to declare or affirm, instead of swearing (*a*).

The word "month" means calendar month, unless words be added showing lunar month to be intended (*b*). In computing a month, the day of the month corresponding with that from which the computation began is excluded; so that two days of the same number are not comprised in it (*c*). When so many "clear days" (*d*), or so many days "at least," are given to do an act, or "not less than" so many days are to intervene, or the period allowed is included between the dates of two acts to be done by another person, both the terminal days are excluded from the computation (*e*). In other cases, it would seem, the rule is to exclude the first and include the last day (*f*).

When a statute requires that something shall be

(*a*) 13 & 14 Vict. c. 21, s. 4.

(*b*) Id.

(*c*) Freeman *v.* Read, 4 B. & S. 174, 32 LJ. MC. 226. See also Webb *v.* Fairmanner, 3 M. & W. 473.

(*d*) Liffen *v.* Pitcher 6 Dowl. NS. 767.

(*e*) Young *v.* Higgon, 6 M. & W. 49.

(*f*) See Chit. Archb. Pr. c. 1, s. 6; and sup. 171.

done "forthwith," or "immediately," or even "instantly," it would probably be understood as allowing a reasonable time for doing it (*a*).

If it requires some act to be done periodically and recurrently once in a certain space of time, as, for instance, the inspection of the boilers of steamers once in six months, it would probably be understood to mean that not more than six months should elapse between the two acts. It would not be satisfied by dividing the year into two equal periods, and doing the act once in the beginning of the first, and once at the end of the second period (*b*).

Courts do not usually take notice of the fraction of a day, but they do so when it is necessary for the purpose of justice between subject and subject (*c*). Thus, they will notice the hour when a party filed a bill, or delivered a declaration, or the sheriff seized goods. But they will not notice fractions of a day as regards judicial proceedings, such as a judgment or issuing execution, which are conclusively regarded as done on the first instant of the day (*d*). Where

(*a*) See Toms *v.* Wilson, 4 B. & S. 455, 32 LJ. QB. 33 & 282; Forsdike *v.* Stone, LR. 3 CP. 607; Massey *v.* Sladen, LR. 4 Ex. 13.

(*b*) Virginia *v.* Maryland St. Nav. Co. *v.* U.S., Taney & Campbell's Maryland Rep. 418.

(*c*) *Per* Cur. in Edwards *v.* Reg. 23 LJ. Ex. 165, 9 Ex. 628; Thomas *v.* Desanges, 2 B. & A. 286; Sadler *v.* Leigh, 4 Camp. 197; Woodland *v.* Fuller, 11 A. & E. 859.

(*d*) Shelley's case, 1 Rep. 98; Edwards *v.* Reg. 23 LJ. Ex. 165; Wright *v.* Mills, 28 LJ. Ex. 223, 4 H & N. 488.

the title of the Crown and of the subject accrue on the same day, the title of the Crown is preferred (*a*).

Sundays are included in all computations of time, except when the time is limited to twenty-four hours, in which case the following day is allowed (*b*). Thus, where an Act required that a recognizance should be entered into in two days after notice of appeal, and the notice was given on a Friday, it was held that recognizances entered into on the Monday were too late; though Sunday was the last day, and they could not be entered into then (*c*). Of course, when an Act expressly excludes Sunday, the days given for doing an act are working days only (*d*).

A continuing act, such as trespass or imprisonment, dates, in the computation of the time allowed for bringing an action in respect of it, from the day of its termination (*e*).

An offence made punishable, in the language of our old statutes, by "judgment of life or member," is thereby made a felony (*f*); but when the judgment

(*a*) R. *v.* Crump, 2 Ves. 295; R. Giles, 8 Pri. 293; Giles *v.* Grover, 9 Bing, 128.

(*b*) Burns, J., Tit. Lord's Day.

(*c*) Exp. Simpkins, 2 E. & E. 392, 29 LJ. MC. 23; Peacock *v.* Reg. 27 LJ. CP. 224; 4 CB. NS. 264.

(*d*) Pease *v.* Norwood, LR. 4 CP. 235.

(*e*) Massy *v.* Johnson, 12 East, 67; Hardy *v.* Ryle, 9 B. & C. 603; Pease *v.* Chaytor, 3 B. & S. 620; Whitehouse *v.* Fellowes, 10 CB. NS. 765.

(*f*) Hawk, c. 40, s. 1.

is "forfeiture of body and goods," or to be at the King's will for body, lands, and goods, the offence is a misdemeanour only (*a*). When a "second offence" is the subject of distinct punishment, it is an offence committed after conviction of a first (*b*). When a case is made triable by "a Court of Record," the Courts of Westminster, but not the Quarter Sessions, are intended (*c*). The punishment of "fine and ransom" is a single pecuniary penalty (*d*), and when to be imposed "at the King's pleasure," this is to be done in his courts and by his justices (*e*). When imprisonment is provided, immediate imprisonment is generally understood (*f*), and "forfeiture" means forfeiture to the Crown, except when it is imposed for wrongful detention or dispossession; in which cases the forfeiture goes to the benefit of the party wronged (*g*).

(*a*) Co. Litt. 391, 3 Inst. 145.

(*b*) 2 Inst. 468.

(*c*) 6 Rep. 19, 2 Hale, 29.

(*d*) 1 Inst. 127.

(*e*) 1 Hale, 375.

(*f*) 8 Rep. 119; comp. 11 & 12 Vict. c. 43, s. 25, sup. 274.

(*g*) 1 Inst. 159, 11 Rep. 60.

CHAPTER XII.

SECTION I.—IMPLIED ENACTMENTS—LOGICAL CONSEQUENCES.

PASSING from the interpretation of the language of Statutes, it remains to consider what intentions are to be attributed to the legislature, where it has expressed none, on questions necessarily arising out of its enactments.

Although, as already stated, the legislature is presumed to intend no alteration in the law beyond the immediate and specific purposes of the Act, these are considered as including all the logical consequences strictly resulting from the enactment. Thus, an Act which declared an offence felony would impliedly give it all the incidents of felony; and it would make it an offence to be an accessory before or after it (*a*). Where the widow of a copyholder became entitled to dower by custom, it was held that she became entitled to all the incidents of dower, such as, among others, to damages, under the Statute of Merton, when deforced of her dower (*b*). The Bankrupt Acts, in requiring a

(*a*) 1 Hale, 704, 1 Hawk. c. 38, s. 18.

(*b*) Shaw *v.* Thompson, 4 Rep. 32 *b*.

bankrupt to answer self-criminating questions relative to his trade and affairs, made his answers subject to the general rules of the law of evidence, and consequently admissible in evidence against him, even in criminal proceedings. To hold otherwise would have been, in effect, to suppose that the legislature, in expressly changing the law which had hitherto protected him from answering, intended also to make the further change, by mere implication, of suspending, pro tanto, the ordinary rule as regards the admissibility of self-prejudicing statements (*a*).

The Judgments Extension Act of 1868, which provided for the execution, in Scotland and Ireland, of judgments recovered in England, was considered as having impliedly abolished the rule of procedure which required that a plaintiff residing out of the jurisdiction should give security for costs; the logical reason for the rule (which was, that if the verdict were against the plaintiff, he would not be within the reach of the process of the Court for costs), having been swept away by the enactment (*b*).

So, the owner or master of a ship ceases to be liable for the injuries done by the ship through the acts or neglect of a pilot, where the employment of the latter is compulsory by law (*c*).

(*a*) R. *v.* Scott, D. & B. 47, 25 LJ. MC. 128.

(*b*) Raeburn *v.* Andrews, LR. 9 QB. 118.

(*c*) Carruthers *v.* Sidebotham, 4 M. & S. 77; The Maria, 1 W. Rob. 95; The Agricola, 2 W. Rob. 10. Comp. The China, 7 Wallace, 67.

If an Act permitted an encroachment on a public right, or abolished it, it would at the same time incidentally sweep away any private right to individual redress. Thus, when the Conservators of the Thames granted a license to construct a pier in the river, an individual would thereby be deprived of all right of action for any special injury resulting to him from the obstruction to the navigation (*a*).

Where an Act provided that the costs and expenses incident to passing it, should be paid by the Metropolitan Board, and did not state to whom they should be paid, it was held that they were payable to the promoters only, and not to agents and other persons employed by them (*b*).

A private Act which, after annexing a rectory to the deanery of Windsor, recited that the dean's residence at the latter place would oblige his frequent absence from the rectory, and required him to appoint a curate to reside there, was deemed to give him, by implication, an exemption from residence (*c*).

But this extension of an enactment is confined to its strictly logical consequences. An Act which empowered justices to discharge an apprentice from his apprenticeship if ill-treated by his master, would not inferentially empower them to order a return of the

(*a*) Kearns *v.* Cordwainers' Co., 6 CB. NS. 338, 28 LJ. 285.

(*b*) Wyatt *v.* Metrop. B. of Works, 11 CB. NS. 744.

(*c*) Wright *v.* Legge, 6 Taunt. 48.

premium; for however just it might be that such a return should be made, and convenient that it should be ordered by the tribunal which cancelled the indenture, such a power was not the logical or necessary incident or result of that which was expressly conferred (*a*). Although the 33 & 34 Vict. c. 93, s. 12, absolves a husband from liability for the antenuptial debts of his wife, and makes the latter capable of being a trader, and "liable to be sued for," and her separate property liable to satisfy, her debts, "as if she had "continued unmarried;" it would seem that a married woman having separate property, could not, as a logical consequence of such liabilities, be made a bankrupt (*b*).

SECTION II.—IMPLIED POWERS AND OBLIGATIONS.

Where an Act confers a power, or imposes a duty, it impliedly grants, also, the power of doing all such acts, or employing such means, as are essentially necessary to its execution. Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potuit (*c*). Thus, an Act which empowers justices to require persons to take an oath as special constables, or gives them jurisdiction to inquire into an offence, impliedly empowers them to apprehend the

(*a*) R. *v.* Vandeleer, 1 Stra. 69; East *v.* Pell, 4 M. & W. 665.

(*b*) Exp. Holland, LR. 9 Ch. 307, *per* Lord Cairns and James, L. J., dubitante Mellish, L. J.

(*c*) Dig. 2, 1, 2.

persons who unlawfully fail to attend before them for that purpose; otherwise the jurisdiction could not be effectually exercised (*a*). And it is laid down that where a statute empowers a justice to bind a person over, or to cause him to do something, and the person, in his presence, refuses, the justice has impliedly authority to commit him to jail till he complies (*b*).

On this principle, it has been held that when a duty is imposed on a county, and costs necessarily arise in questioning the propriety of an act done to enforce that duty—as, for instance, in disputing the liability of a fine imposed on the county for neglect to repair the county jail—the justices, who have the superintendence of the county purse, have impliedly a right to defray such costs out of it (*c*). If an Act authorises a local authority, constituted by statute, to "recover" certain expenses, it impliedly empowers that authority not only to sue for them, but also to sue for them in its collective designation of "local authority," although it is not incorporated (*d*). Where trustees were appointed by an Act of Parliament for putting the Act into execution, and this would, of necessity, continue without limit of time, it was held that from the nature of the powers given to them, they necessarily became

(*a*) Oath before justices, 12 Rep. 131; Bane *v.* Methuen, 2 Bing. 63, 2 Hawk. c. 13, s. 15. Comp. R. *v.* Twyford, 5 A. & E. 430. See also Hall *v.* Planner, 1 Saund. 11; Burton *v.* Henson, 10 M. & W. 105.

(*b*) 2 Hawk. c. 16, s. 2.

(*c*) R. *v.* Essex, 4 TR. 591, *per* Lord Kenyon.

(*d*) Mills *v.* Scott, LR. 8 QB. 496.

a corporation; though they were not expressly made so (*a*).

The same principle is frequently involved in concessions of powers, privileges, or property. When these are granted by statute, everything indispensable to their exercise or enjoyment is impliedly granted also, as it would be in a grant between private persons. As by a private grant of trees, the power of entering on the land where they stand, and of cutting them down and carrying them away, is impliedly given, and by the grant of mines, the power to dig them (*b*); so under a Parliamentary authority to build a bridge on a stranger's land, the grantee tacitly acquires the right of erecting, on the land, the temporary scaffolding which is essential to the execution of the work (*c*).

So, if the legislature sanctions the use of a particular thing for a particular purpose, the sanction carries with it impliedly the privilege, even when no provision is made for compensation, that if damage arises from the use, without negligence, the party so authorised and using it is not responsible; as, for instance, when haystacks are fired by locomotive engines plying on railways (*d*). Trustees

(*a*) Exp. Newport Trustees, 16 Sim. 346.

(*b*) Shep. Touchst. 89.

(*c*) The Clarence Ry. Co. *v.* The G. N. of England Ry. Co., 13 M. & W. 721.

(*d*) R. *v.* Pease, 4 B. & Ad. 30; Vaughan *v.* Taff Valley Ry. Co., 29 LJ. Ex. 247; Freemantle *v.* London & N. W. Ry.

and similar official persons who are authorised to do a particular act, such as to raise a road, to lower a hill, or to make a drain, and, in so doing, prejudice the rights, or injure the property of third persons, are not liable to an action, provided they do no more than the Act authorises (*a*).

An Act which authorises the making of a bye-law impliedly authorises the annexation of a penalty for the breach of it; otherwise it would be nugatory. But the only penalty admitted by law, for this purpose, is a pecuniary one, recoverable by action or distress. It could not lawfully be enforced by imprisonment or forfeiture of goods (*b*). Where bodies are incorporated for the purpose of trade, a power to draw, accept, and indorse bills and notes, and to enter into contracts for the purposes of their trade, is impliedly given to them. It is essential to, and results from the object of their incorporation (*c*).

But as a grant of fish in a pond does not carry with it an authority to dig a trench to let the water out to take the fish, since they can be taken by nets or other

Co., LJ. CP. 12; Blyth *v.* Birmingham Waterworks Co., 7 Ex. 212; Dunn *v.* Birmingham Canal Co., LR. 8 QB. 42; Hammersmith Ry. Co. *v.* Brand, LR. 4 HL. 171.

(*a*) *Per* Williams, J., in Whitehouse *v.* Fellowes, 10 CB. NS. 780; Sutton *v.* Clarke, 6 Taunt. 34.

(*b*) 5 Rep. 63a; Kyd., Corp. ii. 156; Hall *v.* Nixon, 44 LJ. MC. 51.

(*c*) *Per* Best, J., in Broughton *v.* Manchester Waterworks Co., 3 B. & A. 12; Shears *v.* Jacobs, LR. 1 CP. 53, and see the cases collected in S. of Ireland Colliery *v.* Waddle, LR. 3 C. P 463.

devices, without doing such damage (*a*); so, a statute is not construed as impliedly giving powers not absolutely essential to the privilege or property granted. If land is vested by Act of Parliament in persons for public purposes, a power of conveying away any part of it would not be impliedly granted (*b*). An Act of Parliament does not, by authorising persons to repair and cleanse a navigable river, impliedly authorise them to dig in the bed of the river, the soil of which is vested in the owner of a several fishery, a canal or passage to a new wharf, for the convenience of their barges, to the prejudice of the fishery (*c*).

Authority given to make a railway for the passage of waggons, engines, and other carriages, does not impliedly give power to use locomotives on it, as other means of traction may be employed. Therefore, if injury arises from the use of a locomotive, under such circumstances, the general rule of law applies, that a person who uses a dangerous thing, is liable to an action for any injury which he does by it (*d*). Ordinary railway, gas, and mining companies, on this principle, have no implied power to draw, accept, or indorse bills or notes; for this is not essential to their business (*e*). So, it has been held that a colonial

(*a*) Finch's Disc. on Law, 63.

(*b*) Wadmore *v.* Dear, LR. 7 CP. 212; Tipper *v.* Nichols, 18 CB. NS. 121, 34 LJ. CP. 61.

(*c*) Partheriche *v.* Mason, 2 Chit. 658.

(*d*) Jones *v.* Festiniog Ry. Co., LR. 3 QB. 733; R. *v.* Bradford Navigation, 34 LJ. QB. 191.

(*e*) Bateman *v.* Mid Wales

legislative body has impliedly granted to it by the Act or charter which constitutes it, the power of removing and keeping excluded from the chamber where it carries on its deliberations, all persons who interrupt its proceedings; for such a power is absolutely indispensable for the proper exercise of its functions. But a power of punishing such offenders for their contempt of its authority is not necessary for this purpose, and so is not granted by implication (*a*).

The concession of privileges or powers carries with it, often, implied obligations. For instance, an Act which gives a power to dig up the soil of streets for a particular purpose, such as making a drain, impliedly casts on those thus empowered the duty of filling up the ground again, and of restoring the street to its original condition (*b*).

A public body authorised to make a bridge or towpath and to take tolls for its use, is impliedly bound to keep it in proper repair, as long as it takes the tolls and invites the public to use the work; or at least, to give those whom they invite to use it, due warning of the defect which makes it unfit for use (*c*).

Ry. Co., LR. 1 CP. 499, and the cases collected there.

(*a*) Kielly *v.* Carson, 4 Moo. 163; Fenton *v.* Hampton, 11 Moo. 347; Doyle *v.* Falconer, 4 Moo. NS. 219.

(*b*) Gray *v.* Pullen, 5 B. & S. 970, 34 LJ. QB. 265.

(*c*) Winch *v.* Conservators of the Thames, LR. 7 CP. 458, 9

If statutory authority is given to persons, primarily for their own benefit and profit, rather than for any advantage which the public may incidentally derive; as to cut through a highway and throw a bridge over the cutting, or to substitute a new road for the old one; the burden of maintaining the new work in repair would impliedly be cast on them, and not on the county or parish (*a*). Another duty which would also be imposed on them by implication would be that of protecting the public from any danger attending the use of the new work. If it was a swing bridge, for instance, they would be bound to take due precautions to prevent persons from attempting to cross while it was open (*b*). If the work was a railway, crossing a highway on a level, the company authorised to make it, would be impliedly bound to keep the crossing in a proper state to admit of the use of the highway by carriages, without damage to them (*c*).

And this implied obligation would not be excluded, on the principle expressum facit cessare tacitum, by the fact that certain duties are expressly imposed by statute on railway companies who make such crossings; ex. gr., to erect and maintain gates where the public road crosses the railway, and to employ men to open and

CP. 378; Nicholl *v.* Allen, 1 B. & S. 934, 31 LJ. QB., 283, 431.

(*a*) R. *v.* Kent, 13 East, 220; R. *v.* Lindsay, 14 East, 317; R. *v.* Kerrison, 3 M. & S. 526; R. *v.* Ely, 15 QB. 827.

(*b*) Manley *v.* St. Helen's Co. 27 LJ. Ex. 159.

(*c*) Oliver *v.* N. E. Ry. Co., LR. 9 QB. 400.

shut them, and to keep them closed except when carriages have to cross (*a*). So, notwithstanding all such express provisions, the company would be bound, by implication, to prevent all passage along the portion of the highway thus intersected, when it was dangerous to cross (*b*).

But power to pull down the wall of a house without causing unnecessary inconvenience, would not impliedly involve the obligation of putting up a hoarding for the protection of the rooms exposed by the demolition (*c*).

Sometimes the express imposition of one duty may impliedly impose another. Thus the Ballot Act of 1872, which imposes, in express terms, certain specific duties on the presiding officers at polling stations, casts also on those officers, by implication, the duty of being present at their stations during an election, and of providing the voters with voting papers bearing the official mark required by the Act (*d*).

The grant of a privilege or of property to one, sometimes impliedly gives a right to another person. Thus, an Act which empowered a hospital to take and hold lands by will, gift, or purchase, without incurring the penalties of the Mortmain Acts, would impliedly em-

(*a*) Id.; G. E. Ry. Co. *v.* Wanless, LR. 7 HL. 12.

(*b*) Lunt *v.* London and N. W. Ry. Co., LR. 1 QB. 277.

(*c*) Thompson *v.* Hill, LR. 5 CP. 564.

(*d*) Pickering *v.* James, LR. 8 CP. 489.

power persons to devise or convey lands to it; the Act would otherwise be nugatory (*a*). And yet, it seems that an Act which gave one railway company power to purchase certain lands and to construct a railway, according to the deposited plans and books of reference, would not be considered as impliedly giving another company power to sell any of those lands to it (*b*).

Again, in giving a judicial power to affect prejudicially the rights of person or property, a statute would be understood as silently implying, when it did not expressly provide, the condition or qualification that the power was to be exercised in accordance with the rule of natural justice that the person liable to be prejudicially affected should first have an opportunity of defending himself (*c*).

On this ground, under the 4 & 5 W. 4, c. 76, which authorises justices "at their just and proper "discretion" to order out-door relief to an aged or infirm pauper who is unable to work, no such order could be made without summoning those on whom the order was to be made (*d*). So, where an Act (1 & 2 Vict. c. 80), authorised justices, where it appeared that the

(*a*) Perring *v.* Trail, LR. 18 Eq. 88.

(*b*) R. *v.* S. Wales Ry. Co., 14 QB. 902.

(*c*) Bagg's Case, 11 Rep. 99; R. *v.* Univ. of Cambridge, Stra. 557; Emerson *v.* Newfoundland, 8 Moo. PC. 157; Thorburn *v.* Barnes, LR. 2 CP. 384; *re* Pollard, LR. 2 PC. 106.

(*d*) R. *v.* Totnes Union, 7 QB. 690.

appointment of special constables had been occasioned by the behaviour of persons employed by railway or other companies, in executing public works, to make an order on the treasurer of the company to pay the special constables for their services, which order, if allowed by a Secretary of State should be binding on the company; it was held that no such order could be validly made without giving the company notice, and an opportunity of being heard against it (*a*).

The Metropolitan Local Management Act, which requires that before the foundations of a building are laid, a seven days' notice shall be given to the district board, and authorises that board to demolish any building erected without such notice, was construed as impliedly imposing on the board the condition of giving the presumed defaulter a hearing, before proceeding to the demolition of his building; and a district board, which had confined itself to the letter of the Act, and had demolished a building respecting which it had received no notice, without first calling on the owner to show cause against its doing so, was held liable in an action as a wrong doer (*b*). A statute which required justices to issue a distress warrant to enforce a rate or other charge, even though it directed them to issue it, "on proof of demand and non-payment," would nevertheless be construed as impliedly requiring that

(*a*) R. *v.* Cheshire Lines Committee, LR. 8 QB. 344.

(*b*) Cooper *v.* Wandsworth Board, 14 CB. NS. 180, 32 LJ. CP. 185.

they should not do so, without first summoning the party against whom it was demanded, and giving him a hearing against the step proposed to be taken against him (*a*).

Under the provision of the first County Court Act (8 & 9 Vict. c. 95), which empowered the judge to summon a judgment debtor, and, if satisfied that he had the means of paying his debt, to order him to pay it either in one sum or by instalments, and if he failed to obey, to commit him to jail; it was held that an order to pay by future instalments and in default of paying any of them to be committed, was invalid; for it made the debtor liable to imprisonment for not making a payment at a future time without then having an opportunity of defending himself. As the language of the Act was not inconsistent with the general principle that a person ought not to be punished without having had an opportunity of being heard, it was construed as tacitly embodying it; the judge could not properly exercise any discretion until the time of commitment (*b*).

It would be different where the statute gave a power of immediate commitment in default of payment (*c*).

(*a*) See Harper *v.* Carr, 7 TR. 270; R. *v.* Hughes, 3 A. & E. 425; Painter *v.* Liverpool Gas Co., Id. 433.

(*b*) See Kinning's Case, 10 QB. 730, 4 CB. 507; Buchanan *v.* Kinning, 8 CB. 271, 2 L.M. & P. 526; Abley *v.* Dale, 10 CB. 62, 1 L.M. & P. 626; see also Hesketh *v.* Atherton, LR. 9 QB. 4.

(*c*) Arnott *v.* Dimsdale, 2 E. & B. 580, 22 LJ. MC. 161.

So, if the opportunity of defence was provided at another stage, there would be no adequate ground for thus implying the condition in question. For instance, when a statute provided that if a rent-charge was in arrear, it might be levied by distress, and that if it remained in arrear for forty days, and there was no distress, a judge, upon an affidavit of these facts, might order the sheriff to summon a jury to assess the arrears unpaid; it was held that such an order might well be made ex parte. The party subject to prejudice had his opportunity of defence before the sheriff (*a*). So, where an Act authorised justices to inquire and adjudge the settlement of a pauper lunatic, and to make an order on his parish to pay for his maintenance, and empowered the parish to appeal against any such order; it was held that the order might be made without giving the parish sought to be affected, notice of the intended inquiries (*b*).

An Act which empowered a bishop, when it appeared to his satisfaction, either from his own knowledge or from proof laid before him, that the duties of a benefice were inadequately performed, to require the incumbent to appoint and pay a curate; and if he failed to comply within three months, himself to make the appointment and to fix the stipend; was considered as importing the same condition of giving a hearing before exercising the power; and therefore as not

(*a*) *Re* Hammersmith Rent Charge, 4 Ex. 87, 7 D. & L. 41.

(*b*) Exp. Monkleigh, 5 D & L. 404, 17 LJ. MC.

authorising the bishop, even when acting on his own personal knowledge, to issue the requisition, (which was in the nature of a judgment), without having given the holder of the benefice an opportunity of being heard (*a*).

A power to remove a person from his office or employment for lawful cause only, would, on the same principle, involve the condition that it was to be exercisable only after a due hearing, or the opportunity of being heard, had been given to the person proposed to be removed (*b*). But it would, of course, be different if the person was removable arbitrarily, and without any cause being assigned (*c*).

It is obvious that where an Act which creates a new jurisdiction, gives any person dissatisfied with its decision an appeal to another judicial authority, which is empowered to confirm or annul the decision, as to it shall appear just and proper, the right of being heard in support of his appeal is impliedly given to the appellant (*d*).

An Act which empowers two or more justices, or other persons, to do any act of a judicial nature, impliedly requires that they should all be present and acting together in its performance, whether to hear the

(*a*) Capel *v.* Child, 2 Cr. & J. 558; questioned by Alderson, B. in *re* Hammersmith Rent Charge, 4 Ex. 87.

(*b*) R. *v.* Smith, 5 QB. 614.

(*c*) Exp. Teather, 1 L. M. & P. 7; R. *v.* Darlington School, 6 QB. 682.

(*d*) R. *v.* Archbishop of Canterbury, 1 E. & E. 545, 28 LJ. QB. 154.

evidence, or to view, when they are to act on personal inspection (*a*); and to consult together, and form their judgment (*b*). When the Act to be performed is ministerial, it is not necessary, on general principles, that the persons authorised to do it should meet together for the purpose; and the statute which gave such authority would therefore not be construed as impliedly requiring it (*c*).

It has been already mentioned that when a power is conferred to do some act of a judicial nature, or of public concern and interest, there is implied an obligation to exercise it, when the occasion for it arises, and its exercise is duly called for. This implied obligation is usually said to modify the language creating the power, when permissive, by making it imperative (*d*); but it seems to be a matter of implied enactment, rather than of verbal interpretation.

SECTION III.—IMPERATIVE OR DIRECTORY.

WHEN a statute commands that something shall be done, or done in a particular manner, the important question arises, when the statute is silent respecting

(*a*) R. *v.* Cambridge, 4 A. & E. 111.

(*b*) Billings *v.* Prince, 2 W. Bl. 1017; R. *v.* Hamstall Redware, 3 TR. 380; R. *v.* Forrest, Id. 38; R. *v.* Great Marlow, 2 East, 244; Battye *v.* Gresley, 8 Id. 319; Grindlay *v.* Barker, 1 B. & P. 229; Cook *v.* Loveland, 2 Id. 31.

(*c*) *Re* Hopper, LR. 2 QB. 367.

(*d*) Sup., p. 218, et seq.

it, whether the command is to be considered as a mere direction or instruction of no obligatory force, and involving no invalidating consequence for its disregard; or as imperative, with an implied nullification for disobedience. No rule can be laid down for determining this question beyond the general one, that it depends on the scope and object of the enactment (*a*).

Though a command to do a thing in a particular way does not necessarily imply a prohibition to do it in any other way, it would, nevertheless, clearly imply it, if, without it, the command would be nugatory, and the aim and object of the Legislature would be defeated. The 12th section of the Metropolitan Building Act, 18 & 19 Vict. c. 122, for instance, which enacts that the walls of buildings shall be constructed of brick, stone, or other incombustible material, though containing no prohibitory words, obviously prohibits, by implication, their construction with any other; for it admits of no doubt that the whole object of the Act would be frustrated, if it was construed as leaving the right of using combustible materials for building houses in the metropolis (*b*).

It was held, in one case, that the enactments of the Companies Clauses Consolidation Act of 1845 (8 Vict. c. 16), which prescribe the form in which

(*a*) See *per* Lord Campbell in Liverpool Borough Bank *v.* Turner, 2 De G. F. & J. 502, 30 LJ. Ch. 379.

(*b*) Stevens *v.* Gourley, 7 CB. NS. 99, 29 LJ. CP. 1.

contracts "may" be entered into on behalf of companies were imperative (*a*); but in another, it was considered that, being in the affirmative, they did not take away pre-existing rights and powers, and that a contract not entered into in accordance with their provisions, but partly performed (*b*), might be enforced (*c*). The formalities prescribed by the Merchant Shipping Act of 1854 for the transfer of ships were held imperative (*d*); although there were no negative words, as in the earlier and repealed Act in pari materiâ, declaring all transfers in any other form null and void (*e*). Where a company, incorporated by statute for special purposes and with special powers, was empowered to borrow by mortgage, under certain circumstances, not more than a given sum, to be applied in carrying out the Act; it was held that the reasonable and even necessary inference was, that the Legislature intended to prohibit all borrowing except that which it had expressly authorised. And this inference was not considered weakened by the fact that the company was in express terms forbidden

(*a*) Leominster Canal Co. *v.* Shrewsbury, &c., Ry. Co., 26 LJ. Ch. 764.

(*b*) See sup. p. 231.

(*c*) Wilson *v.* West Hartlepool Co., 34 LJ. Ch. 241.

(*d*) *Per* Lord Campbell in the Liverpool Borough Bank *v.* Turner, 2 G. F. & J. 502, 30 LJ. Ch. 379, affirming V.-C. Wood, 1 John. & H. 159, 29 LJ. Ch. 827. Comp. Ward *v.* Beck, 13 CB. NS. 668; Stapleton *v.* Haymen, 2 H. & C. 918, 33 LJ. Ex. 170, and 25 & 26 Vict. c. 63, s. 3.

(*e*) Comp. Le Feuvre *v.* Miller, 26 LJ. MC. 175, inf.

to borrow on loan notes or other negotiable or assignable securities (*a*).

The reports are full of cases in which the conditions, forms, or other attendant circumstances prescribed by statute, have been regarded as of the essence of the act or thing regulated by it, and their omission has been held fatal to its validity; and of other cases where such prescriptions have been considered as merely directory, and the neglect of them involved no ulterior consequence beyond the liability to the penalty, if any, imposed for the breach of the enactment. The propriety of ever treating the provisions of a statute in the latter light has been sometimes questioned (*b*); but it would seem reasonably justifiable, as in accordance with the probable intention of the Legislature, when reason and convenience are in its favour. In this respect, a strong line of distinction may, in general, be drawn between cases where the provisions affect a public duty, and those which relate to a privilege or power. When powers and privileges are granted, subject to compliance with certain regulations or conditions, it seems, in general, not contrary to justice or policy to exact a rigorous observance of them, and it is therefore probable that such an observ-

(*a*) Chambers *v.* Manchester and Milford Ry. Co., 5 B. & S. 588, 33 LJ. QB. 268. Comp. *Re* Cork and Youghal Ry. Co., LR. 4 Ch. 748.

(*b*) See ex. gr. *per* Martin, B. in Bowman *v.* Blyth, 27 LJ. MC. 22, 7 E. & B. 47; Sedg. Interp. Stat. 375.

ance was deemed essential by the Legislature. But when a public duty is imposed, and the statute requires that it shall be performed in a certain manner, or within a certain time, it is difficult to believe that the Legislature intended the injustice and inconvenience to others which would result if the act to be done were of no legal validity, unless the directions of the statute were strictly observed.

In general, then, it seems that where a statute confers a privilege or a power, the regulative provisions which it imposes on its acquisition or exercise are essential and imperative. Thus, where an Act gave to the designers of prints the sole right of printing them for fourteen years after the day of publication, adding, "which (day) shall be truly engraved with the name of the proprietor on each plate;" it was held that the neglect to comply with this provision was fatal to the copyright (*a*).

So, if the liberty of appealing from a decision is given, subject to the fulfilment of certain conditions, such as giving notice of appeal and entering into recognizances, or transmitting documents within a certain time, a strict compliance with these provisions would be imperative, and non-compliance fatal to the right of appeal (*b*). In the same way, where a statute

(*a*) Newton *v.* Cowie, 4 Bing. 234; Brooks *v.* Cock, 3 A. & E. 141.

(*b*) R. *v.* Oxfordshire, 1 M. & S. 446; R. *v.* Carnarvon, 4 B. & A. 86; R. *v.* Bond, 6 A. & E. 905; R. *v.* Lancashire, 8 E. & B. 563, 27 LJ. MC. 161; Mor-

enacts that convictions or orders "shall" be in a certain form, it is peremptory and not merely directory (*a*).

The 16 & 17 Vict. s. 96, which, in authorising the confinement of lunatics, prohibits their reception in asylums without medical certificates, which are required to set forth several particulars, and among them, the street and number of the house where the supposed lunatic was examined, makes a strict compliance with these provisions imperative; and a certificate which omitted the street and number of the house where the examination took place was held insufficient to justify the detention of the lunatic (*b*).

An enactment which provides that every warrant issued by a Court shall be under seal, is imperative; so that a commitment under an unsealed warrant would not only be invalid, but would entitle the person committed to damages from him who had obtained the warrant without taking care that the Court performed its duty by sealing it (*c*).

If commissioners, authorised to fix the boundaries of a parish, were required by the Act to advertise the boundaries which they fixed, and to insert them in their award, and the Act declared that

gan *v.* Edwards, 5 H. & N. 415; Woodhouse *v.* Woods, 29 LJ. MC. 149; Exp. Lowe, 3 D. & L. 737; R. *v.* Worcestershire, 15 LJ. MC. 99.

(*a*) R. *v.* Jefferies, 4 T.R. 767; Davidson *v.* Gill, 1 East, 72.

(*b*) R. *v.* Pinder, 24 LJ. QB. 148.

(*c*) Exp. Van Sandau, De Gex, Bank. 303.

the boundaries "so fixed" should be conclusive; a variation between the boundaries set forth in the award and those advertised would vitiate the award; for the requisites of the Act would not have been strictly complied with (*a*).

It has been frequently held that a statute which prescribes the formalities to be observed by a corporate or public body constituted for a special purpose in executing contracts, is imperative, and that a contract not executed in conformity with such provisions was of no binding effect on the body (*b*).

The 57 Geo. 3, c. 99, which required that no action should be brought against a clergyman for any penalty incurred under it, until a notice had been delivered to him or at his abode, and also to the bishop, "by "leaving the same at the registry of his diocese," was held not complied with by a delivery to the deputy-registrar at the house of the latter, who carried it the next day to the registry (*c*).

Where it was enacted that a person who objected to an elector's qualification might be heard before the revising barrister in support of his objection, if he had

(*a*) R. *v.* Washbrook, 4 B. & C. 732.

(*b*) Cope *v.* Thames Haven Dock Co., 3 Ex. 841; Diggle *v.* London and Blackwall Ry. Co., 5 Ex. 442; Leominster Canal Ch., 26 LJ. Ch. 764. See also Cornwall Mining Co. *v.* Bennett, 5 H. & N. 432; Wolverhampton Waterworks *v.* Hawkesford, 11 CB. NS. 456, 31 LJ. CP. 184; Irish Peat Co. *v.* Phillips, 1 B. & S. 598, 30 LJ. QB. 363.

(*c*) Vaux *v.* Vollans, 4 B. & Ad. 525.

given notice to the elector; and it was also provided that besides the ordinary way of serving it, the notice might be sent by post, addressed to his place of abode, as described in the list of voters prepared by the clerk of the peace; it was held that to send by post a notice, not to the address so given, which was incorrect, but to the true address, was not a compliance with the Act, and that the objector could not be heard on mere proof of posting such a notice (*a*). Had he directed it to the address given in the list by the clerk of the peace, he would have been heard; though the notice might not have reached the voter, the Act would have been complied with.

On the other hand, where the prescriptions of a statute relate to the performance of a public duty, they seem to be generally understood to be merely instructions for the guidance and government of those on whom the duty is imposed, or directory only. The neglect of them may be punishable, indeed, but it does not affect the validity of the act done in disregard of them. To give them that effect would often lead to serious inconvenience and absurdity. Thus, to hold that an Act which required an officer to prepare and deliver to another officer a list of voters, on or before a certain day, under a penalty, made a list not delivered till a later day invalid, would, in effect, put it in the power of the per-

(*a*) Noseworthy *v.* Buckland, LR. 9 CP. 233.

son charged with the duty of preparing it, to disfranchise the electors; a conclusion too unreasonable for acceptance (*a*).

It is no impediment to this construction, that there is no remedy for non-compliance with the direction. The Act of 2 Hen. 5, which requires justices to hold their sessions in the first week after Michaelmas, Epiphany, Easter, and the translation of St. Thomas the Martyr, has always been held to be merely directory (*b*); and yet it would be difficult to say that there would be any remedy against justices for appointing their sessions on other days than those prescribed by the statute (*c*).

The same construction was put on the 54 Geo. 3, which enacted that the Michaelmas sessions should be held in the week after the 11th of October, instead of the time then appointed (*d*); though such a construction would seem to have left the earlier law substantially unaltered, an intention not lightly to be imputed to the Legislature (*e*).

Though the 43 Eliz. c. 2 requires that overseers of the poor shall be appointed yearly in Easter week, they may lawfully be appointed at any other time of the

(*a*) R. *v.* Rochester, 27 LJ. QB. 45, 434; 7 E. & B. 910. Hunt *v.* Hibbs, 5 H. & N. 123, 29 LJ. Ex. 222.

(*b*) 2 Hale, P. C. 50.

(*c*) *Per* Parke, B. in Gwynne *v.* Burnell, 2 Bing. NC. 39.

(*d*) R. *v.* Leicester, 7 B. & C. 6.

(*e*) See ex. gr. the ground on which Crisp *v.* Bunbury was decided, sup. 107.

year (*a*). In the same way, enactments fixing the time for the election of churchwardens and other parochial and municipal officers, have been held to be directory only (*b*); at all events, if imperative, they would not be construed as depriving by implication the Court of Queen's Bench of the power of ordering an election at a different time from that prescribed, where there had been a wrongful omission to hold it at the proper time, and public inconvenience resulted from the omission (*c*).

The 26 Geo. 2, c. 14, which "required" the justices of the peace in England to settle a table of fees at their quarter sessions "held next after the 24th of June, 1753," and, such table being approved by the justices "at the next succeeding general quarter sessions," to lay it before the judges at the next assize for confirmation, was held imperative as to the requirement that a table settled at one sessions should be confirmed at the next; so that one which had been submitted for confirmation at the next, but had not been confirmed till a later sessions, to which its consideration had been adjourned, was invalid (*d*). But it would be competent to the justices at quarter sessions

(*a*) R. *v.* Sparrow, 2 Stra. 1123.

(*b*) Anon., 1 Ventr. 267; R. *v.* Corfe Mullen, 1 B. & Ad. 211; R. *v.* Denbighshire, 4 East, 142; R. *v.* Norwich, 1 B. & Ad. 310; R. *v.* Sneyd, 9 Dowl. 1001.

(*c*) R. *v.* Sparrow, 2 Stra. 1123; R. *v.* Rochester, 27 LJ. QB. 45, 433.

(*d*) Bowman *v.* Blyth, 7 E. & B. 26, 26 LJ. MC. 57, 27 LJ. MC. 22.

to settle a table at the present time, though the statute required them to do it in 1753. It is a duty which they might be compelled to perform; and in this respect the statute is directory (*a*).

In all cases, however, the question as to the Legislature intending a provision to be imperative or directory, in the sense above mentioned, whether it arises in respect of a power or a duty, or otherwise, is to be determined by weighing the consequences of either view. Where the Legislature has expressed no intention on the point, that intention should be imputed to it which is most probable; and it must be that which is most consistent with reason, and a due regard to convenience and justice.

On this principle, a provision that no person named in a commission of the peace shall be authorised to act as a justice of the peace, unless he shall have taken and subscribed the oaths required by law, subject to a penalty, does not affect the validity of the acts of a justice who acts without having been sworn; though it be unlawful for him to act. If his acts were to be held void, all persons who acted in the execution of a warrant issued by him, would act without authority; a constable who arrested, and a gaoler who received the arrested person, under it, would be trespassers. Resistance to them would be lawful; everything done by them would be unlawful; and a constable, and the persons aiding him might become amenable even to a

(*a*) Lewis *v.* Davis, Feby., 1875, Cam. Scac.

charge of murder, for acting under an authority which they reasonably considered themselves bound to obey, and of the invalidity of which they were wholly ignorant (*a*). Such consequences could not reasonably be supposed to have been intended; and the just conclusion was that the Legislature intended by the prohibition only to impose a penalty for its infringement.

On the same general ground, the acts of aldermen who had been in office for several years without re-election, were held valid until their successors were appointed; the provision that they should be elected annually being directory only (*b*). A person who executed a public office in a parish for a year was held to have gained a settlement there, though he had never been legally installed by swearing in (*c*).

The provision in the Mutiny Acts that a recruit shall, on enlistment, be asked certain questions touching his personal history is merely directory, and the omission to ask them does not invalidate the enlistment (*d*). The Parochial Assessment Act, 6 & 7 Wm. 4, c. 96, in requiring that poor-rates should contain a series of particulars relating to the persons and property rated was held to be merely directory, and not to affect the validity of a rate which did not contain all the particulars required (*e*): and

(*a*) *Per* Cur. in Margate Pier Co. *v.* Hannam, 3 B. & A. 266.

(*b*) Foot *v.* Truro, 1 Stra. 626.

(*c*) R. *v.* Corfe Mullen, 1 B. & Ad. 211.

(*d*) Wolton *v.* Gavin, 16 QB. 48.

(*e*) R. *v.* Fordham, 11 A. & E. 73. See sup., 168.

the Health of Towns Act, in requiring that rates made under it should be published like a poor-rate, was also held directory only, so that the non-publication of the rate did not affect its validity (*a*). The latter Act, indeed, omitted the nullifying words which the former contained as regards the neglect to sign the rate; and the omission was considered to show an intention that that consequence should not follow (*b*).

The provision of the Insolvent Act, 7 Geo. 4, c. 57, which required the Court to cause notice of the filing of the insolvent's petition to be given to the creditors, was held to be merely a direction to the Court, and compliance with it not a condition precedent to the validity of the discharge (*c*).

So, an Act (29 Geo. 2, c. 29), which empowered the quarter sessions to appoint treasurers, "first giving security to be accountable," was held directory as regards this provision, and as not affecting the validity of the appointment, which was held complete though no security was given (*d*).

It has been held that the neglect of merely formal requisites in keeping the register of the shareholders of a joint stock company, however fatal for some purposes, is immaterial as between the company and its share-

(*a*) Le Feuvre *v.* Miller, 26 LJ. MC. 175.

(*b*) See p. 289. Comp. Liverpool Borough Bank *v.* Turner, sup. 332.

(*c*) Read *v.* Croft, 5 Bing. N. C. 68, 6 Scott, 770.

(*d*) R. *v.* Patteson, 4 B. & Ad. 9.

holders. Thus, the provision that the register should be sealed, though essential to its being producible in evidence, is immaterial as regards making a person a shareholder, if there be in fact a book bonâ fide intended to be a register. But the neglect to number and appropriate the shares would be fatal (*a*).

Where an Act provided that no beer license should be granted to any person who was not a resident occupier of the premises sought to be licensed, under the penalty of the license being null and void; and it required, further, that the applicant should produce to the licensing officer a certificate from the overseer of the parish, that he was such resident occupier; the latter provision was considered to be only directory, and a license obtained without the certificate, good. The omission from the latter provision of the nullifying words which were appended to the former, indicated a difference of intention; besides, though it was reasonable that a license to a person not properly qualified should be void, it would hardly be reasonable that it should be void, if the holder was duly qualified, merely because the licensing officer had not been satisfied of the qualification by the means provided by the Act; which might have been wrongfully withheld

(*a*) Wolverhampton Waterworks Co. *v.* Hawkesford, 11 CB. NS. 456, 29 LJ. CP. 121, 31 Id. 184; Southampton Dock Co. *v.* Richards, 1 M. & Gr. 448; London Grand Junction Ry. Co. *v.* Freeman, 2 Id. 606.

by the overseer (*a*). So, a provision that convictions for sporting without a certificate should be registered with the commissioners of taxes was held directory only, so that the omission to register it did not affect the validity of the conviction (*b*).

The 85th section of the Public Health Act of 1848, in empowering the Local Board of Health to enter into all contracts necessary for carrying the Act into execution, contains two provisions which may be taken as illustrating the distinction under consideration. It enacts that contracts shall be sealed with the seal of the board; that they shall contain certain particulars; and that "every contract so entered into shall be "binding; provided always . . . that before "contracting for the execution of any works, the board "shall obtain from the surveyor a written estimate "of the probable expense of executing it and keeping it in repair." The first of these requisites was decided to be imperative, and a contract unsealed was consequently held inoperative against the board and the rates. The power to contract so as to bind the rates could not have been exercised if it had not been given by the Act; and, being entirely the creature of the statute, it could not be exercised in any other manner than that prescribed by the statute (*c*). But the provision which required an estimate, was held

(*a*) Thompson *v.* Harvey, 28 LJ. MC. 163, 4 H. & N. 254.

(*b*) Mason *v.* Barker, 1 C. & K. 100.

(*c*) Frend *v.* Dennet, 27 LJ. CP. 314, 4 CB. NS. 576.

to be merely a direction or instruction for the guidance of the board, and not a condition precedent, the performance of which was essential to the validity of the contract (*a*). It was remarked, that in the former case, the party contracted with knew, or had the means of knowing, what forms were required by the Act, and could see to their observance; while in the latter, he had not, it was said, the same facility for ascertaining whether the board had consulted their surveyor. The non-observance of the latter provision would, however, probably impose on the board the penalty of having no remedy against their constituents for reimbursement (*b*).

SECT. IV.—LEX NON COGIT AD IMPOSSIBILIA—QUILIBET POTEST RENUNTIARE JURI PRO SE INTRODUCTO.

Enactments which impose duties on conditions are, when these are not conditions precedent to the jurisdiction, subject to the maxim that lex non cogit ad impossibilia aut inutilia. They are understood as dispensing with the performance of what is required when performance is impossible (*c*).

(*a*) Nowell *v.* Mayor, &c., of Worcester, 9 Ex. 467, 23 LJ. Ex. 139.

(*b*) *Per* Parke, B. Id. See East Anglian Ry. Co. *v.* E. C. Ry. Co., 11 CB. 775, 21 LJ. CP. 23; McGregor *v.* Deal, &c., Ry. Co., 18 QB. 618, 22 LJ. QB. 69; Royal British Bank *v.* Turquand, 5 E. & B. 248.

(*c*) As to performance, where the duty has not been imposed by superior authority, but has been voluntarily assumed, see

Thus, where an Act provided that an appellant should send notice to the respondent of his having entered into a recognizance, in default of which the appeal should not be allowed; it was held that the death of the respondent before service was not fatal to the appeal, but dispensed with the service (*a*). In the same way, the provision of the 20 & 21 Vict. c. 43, which similarly makes the transmission of a case stated by justices to the superior courts, by the appellant, within three days from receiving it, a condition precedent to the hearing of the appeal (*b*), was held dispensed with, when the Court was closed during the three days, since compliance was impossible (*c*).

In such cases, the provision or condition is dispensed with, when compliance is impossible, in the nature of things. It would seem to be sometimes equally so, where compliance was, though not impossible in this sense, yet impracticable, without any default on the part of the person on whom the duty was thrown. An Act, for instance, which made actual payment of the rent, as well as

the cases cited in Hall *v.* Wright, E. B. & E. 746; Taylor *v.* Caldwell, 3 B. S. 826; Boast *v.* Firth, LR. 4 CP. 1; Appleby *v.* Myers, LR. 1 CP. 615, 2 CP. 651; and Howell *v.* Coupland, LR. 9 QB. 462.

(*a*) R. *v.* Leicestershire, 15 QB. 88. See also Brumfitt *v.* Roberts, LR. 5 CP. 224.

(*b*) Morgan *v.* Edwards, 5 H. & N. 415, 29 LJ. MC. 108; Woodhouse *v.* Woods, Id. 149; Stone *v.* Dean, 27 LJ. QB. 319, E. B. & E. 504; Norris *v.* Carrington, 16 CB. NS. 10.

(*c*) Mayer *v.* Harding, LR. 2 QB. 410, see R. *v.* Allen, 33 LJ. MC. 98.

the renting of a tenement, essential to the acquisition of a settlement, would probably be complied with, if the rent was tendered, though it was not accepted (*a*). If the respondent in an appeal kept out of the way to avoid service of the notice of appeal, or at all events, could not be found after due diligence in sending for him, the service required by the statute would probably be dispensed with (*b*). So, if the appellant was entitled to appeal, subject to the condition of giving security for costs within a certain time, he would be held to have complied with the condition, if he offered and was ready to complete the security within the limited time, though it was, owing to the act of the Court, or of the respondent, not completed till long after (*c*).

Where, however, the act or thing required by the statute is a condition precedent to the jurisdiction of the tribunal, compliance cannot be dispensed with; and if it is impossible, the jurisdiction fails. It would not be competent to a Court to dispense with what the legislature had made the indispensable foundation of its jurisdiction. Thus, the Act which enacts that justices, at the hearing of a bastardy summons, "shall hear the evidence" of the mother, and such other evidence as she may adduce; and

(*a*) *Per* Bayley, J. in R. *v.* Ampthill, 2 B. & C. 847.

(*b*) *Per* cur. in Morgan *v.* Edwards, and *per* Crompton, J. and Hill, J. in Woodhouse *v.* Woods, ubi sup. See also Syred *v.* Carruthers, E. B. & E. 469.

(*c*) Waterton *v.* Baker, LR. 3 QB. 173; and see R. *v.* Aston, 1 L. M. & P. 491.

which authorises them to make an affiliation order "if the mother's evidence be corroborated in some material particular by other testimony," makes the evidence of the mother so essential to the jurisdiction, that no order could be made without it, although the woman died before the hearing (*a*). Under the 13th section of the Admiralty Act of 1861, which gives the Court of Admiralty the same powers, when a vessel or its proceeds are under arrest, as the Court of Chancery has under the Merchant Shipping Act of 1854, over suits for limiting the liability of shipowners, no jurisdiction could be exercised by the former Court, when the ship was lost. The jurisdiction of the Court depended on the ship, or the proceeds of its sale, being under arrest; and the shipowner could not give it jurisdiction by paying into Court a sum equivalent to its value or proceeds (*b*).

Another maxim which sanctions the non-observance of a statutory provision, is that, cuilibet licet renuntiare juri pro se introducto. Every one has a right to waive, and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual, and which may be dispensed with without infringing on any public right or public policy. Thus a person may agree to waive the benefit of the Statute of Limitations (*c*). The trustees

(*a*) R. *v.* Armytage, LR. 7 QB. 773.

(*b*) James *v.* S. W. R. Co., LR. 7 Ex. 287.

(*c*) E. I. Co. *v.* Paul, 7 Moo. PC. 86; Lade *v.* Trill, 6

of a turnpike road may, in demising the tolls, waive the provision of the Act which requires that the demise shall be signed by the sureties of the lessee (*a*). A passenger may waive the benefit of an enactment which entitles him to carry so many pounds of luggage with him; and he does so, it may be added, by taking a ticket with the express condition that he shall carry no luggage (*b*). The only person intended to be benefited by such an enactment is, obviously, the passenger himself; and no consideration of public policy is involved in it (*c*). A company authorised by statute to levy tolls within a specified maximum is not bound to exact uniform tolls from all persons alike; but is entitled, in the absence of an express provision requiring equality, to remit any part of the tolls to particular persons, at its discretion (*d*).

When a person does waive the benefit of any such law, he cannot recall the concession, after it has been acted on, and insist on the right which the rule gave him. A tenant, for instance, whose goods have been distrained, may waive the enactment which requires an appraisement before the sale of the goods; and he could not, after the sale, be heard to complain that no appraisement had been made (*e*).

Jur. 272, *per* Knight Bruce, V. C.

(*a*) Markham *v.* Stanford, 14 CB. NS. 376.

(*b*) Rumsey *v.* N. E. R. Co., 32 LJ. CP. 244 14 CB. NS. 641.

(*c*) Id. *per* Willes, J.

(*d*) Hungerford Market Co. *v.* City Steam Boat Co., 30 LJ. QB. 25, 3 E. & E. 365.

(*e*) Bishop *v.* Bryant, 6 C. & P. 484.

The regulations concerning the procedure and practice of Civil Courts may in the same way be waived by those for whose protection they were intended. Thus, the provisions of the Act of 4 Anne, c. 16, which required that a plea in abatement should be verified by affidavit, might be waived by the plaintiff (*a*). So, the 13 & 14 Vict. c. 61, s. 14, which gave an appeal from a County Court, provided the appellant, within ten days, gave notice of appeal and security for costs; and after directing that the appeal should be in the form of a case, enacted that no judgment of a County Court Judge should be removed into any other court, except in the manner and under the provisions above mentioned; it was held that the want of due notice and security might be waived. The provision was intended for the benefit of the respondent, and was not a matter of public concern (*b*). So, a defendant, even in a criminal case before a justice of the peace, may waive any irregularity in the summons, or indeed dispense with the summons altogether; and he does so, not, indeed, by appearing merely (*c*), but by appearing and entering on the case on its merits; for he would not be allowed to take his chance of prevailing on the merits, and at the same time to reserve his objections to a preliminary irregularity (*d*).

(*a*) Graham *v.* Ingleby, 1 Ex. 651.

(*b*) Park Iron Gate Co. *v.* Coates, LR. 5 CP. 634.

(*c*) R. *v.* Carnarvon, 5 Nev. & M. 364.

(*d*) R. *v.* Barrett, 1 Salk. 383; R. *v.* Johnson, 1 Stra. 261; R.

So, where a statute requires justices to make known to a party his right to appeal, and the steps necessary to carry out this right, such as giving notice of appeal and entering into recognisances; the party may waive this provision, and does so by declaring that he does not intend to appeal (*a*).

But when public policy requires the observance of the provision, it cannot be waived by an individual. Privatorum conventio juri publico non derogat (*b*). Private compacts are not permitted either to render that sufficient, between themselves, which the law declares essentially insufficient; or to impair the integrity of a rule necessary for the common welfare; such, for instance, as the enactment which requires the attestation of wills (*c*). It is said to be a general understanding in the profession that a prisoner can consent to nothing; at least in the course of his trial (*d*). In criminal matters, a person cannot waive what the law requires (*e*). Where, upon a trial for felony, the jury was discharged, and, at the new trial, some of the witnesses, after being sworn, had their evidence read over to

v. Aiken, 3 Burr. 1785; R. *v.* Stone, 1 East 639; R. *v.* Berry, 28 LJ. MC. 86; R. *v.* Fletcher, LR. 1 C. C., 320; R. *v.* Smith, Id. 110; R. *v.* Widdop, LR. 2 CC. 3.

(*a*) R. *v.* Yorkshire, 3 M. & S. 493.

(*b*) Dig. 50, 17, 45.

(*c*) *Per* Wilson, J. in Habergham *v.* Vincent, 2 Ves. J. 227. See New York Civ. Code, Art. 1968, n. 2.

(*d*) *Per cur.* in R. *v.* Bertrand, LR. 1 PC. 520.

(*e*) *Per* M. Smith, J. in Park Gate Iron Co. *v.* Coates, LR. 5 CP. 639.

them by the judge from his notes, and the counsel for the Crown and the prisoner had afterwards liberty to examine and cross-examine them; it was held that this course of proceeding vitiated the trial, and that the consent or acquiescence of the prisoner did not cure the irregularity (*a*). The object of a criminal trial, it was observed, was the administration of justice in a course as free from doubt or chance of miscarriage as human administration of it can be; not the interests of either party.

Consent cannot give jurisdiction (*b*); and therefore any statutory provision which goes to the jurisdiction does not admit of waiver. It was held that the provision of the 20 & 21 Vict. c. 43, which requires the appellant from a decision of justices to transmit the case in three days, to the court of appeal, could not be waived by the respondent, on the ground either that it went to the jurisdiction, or that it related to a criminal case, or that the justices had an interest in the observance of the rule (*c*).

Where an Act of Parliament compels a breach of a

(*a*) R. *v.* Bertrand, ubi sup.; and see R. *v.* Bloxham, 6 QB. 528; *per* Pollock, CB. and Alderson, B. in Graham *v.* Ingleby, 1 Ex. 651. Comp. R. *v.* Thornhill, 8 C. & P. 575.

(*b*) Lawrence *v.* Wilcock, 11 A. & E. 941; Lismore *v.* Beadle, 1 Dowl NS. 566.

(*c*) Morgan *v.* Edwards, 5 H. & N. 415; Peacock *v.* R., 4 CB. NS. 264, 27 LJ. 229; see the remarks in Park Gate Iron Co. *v.* Coates, LR. 5 CP. 634, dubit. Keating, J.

private contract, the contract is impliedly repealed by the Act, so far as the latter extends; or the breach is excused, or is considered as not falling within the contract (*a*). The intervention of the Legislature, in altering the situation of the contracting parties, is analogous to a convulsion of nature, against which they, no doubt, may provide; but if they have not provided, it is generally to be considered as excepted out of the contract (*b*). Thus, where land was leased to certain persons, who covenanted to build a workhouse on it, and not to use the house or land for any other purpose than the support of the poor of the parish; and the Poor Law Commissioners, under the 4 & 5 W. 4, c. 76, incorporated the parish in an Union, and removed the paupers to the union workhouse, whereupon the house was shut up and the land was let at a rack rent, which was applied in aid of the rates; it was held that the covenant had not been broken, or that the breach was excused by legislative compulsion (*c*).

If a man covenants not to do a thing which was unlawful at the time of the covenant, and an Act subsequently makes it lawful only, but not imperative, to do it; the covenant is unaffected by the Act (*d*).

(*a*) *Per* Cur. in Brewster *v.* Kitchell, 1 Salk. 198.

(*b*) *Per* Pollock, CB. in Osward *v.* Berwick, 23 LJ. QB. 331, 3 E. & B.

(*c*) Doe *v.* Rugeley, 6 QB. 107.

(*d*) *Per* Cur. in Brewster *v.* Kitchell, 1 Salk. 198.

Where a lessee covenanted, for himself and his "assigns," that he would not build on the demised premises; and he was afterwards compelled, under an Act of Parliament, to sell the land to a railway company, who built on it; it was held that the company was not an "assign" within the meaning of the covenant. The legislature, it was considered, had, in compelling the sale, created a kind of assign not contemplated by either lessor or lessee when the contract was entered into; and so, the lessee could not justly be held responsible for the acts of such an assign. It was not reasonable to impute to the legislature the intention that he should remain liable for the non-performance of that which it had, itself, prevented him from performing (*a*).

(*a*) Baily *v.* De Crespigny, LR. 4 QB. 180. See also Wadham *v.* P. M. Genl., LR. 6 QB. 644, and Brown *v.* Mayor of London, 9 CB. NS. 726, 30 LJ. CP. 225.

CHAPTER XIII.

SECTION I.—EFFECT OF A PENALTY ON CONTRACTS CONNECTED WITH ACTS SUBJECT TO THE PENALTY.

WHEN a statute prohibits an act, any contract made respecting it is illegal and void (*a*). What has been done in contravention of an Act of Parliament, it has been said, cannot be made the subject of an action (*b*). Thus, as the Metropolitan Building Act prohibits the use of combustible materials for building walls in the metropolis, the builder of any such walls could not maintain an action for the price of erecting them (*c*). A waterman being prohibited from taking an apprentice, unless he was the occupier of a tenement wherein to lodge him; it was held that an indenture of apprenticeship contrary to this provision was void, and that no settlement was gained by service under it (*d*).

(*a*) Bartlett *v.* Vinor, Carth. 252, Skin. 322; *per* Tindal C. J. in De Begnis *v.* Armistead, 10 Bing. 110; Redpath *v.* Allen, LR. 4 PC. 511.

(*b*) *Per* Lord Ellenborough in Langton *v.* Hughes, 1 M. & S. 593.

(*c*) Stevens *v.* Gourley, 7 CB. NS. 99, 29 LJ. CP. 1; sup. 331.

(*d*) R. *v.* Gravesend, 3 B. & Ad. 240.

When a penalty is imposed for doing or omitting an act, the act or omission is obviously prohibited and unlawful; for a statute would not inflict a penalty on a lawful act (*a*). When the thing in respect of which the penalty is imposed is a contract, it is thereby made void. Thus, the Joint Stock Companies Act, 7 & 8 Vict. c. 110, s. 24, in enacting that every promoter of a company concerned in making contracts on its behalf before its provisional registration, should be subject to a penalty of 25*l.*, impliedly rendered every such contract void (*b*). The Act which imposes a penalty on certain classes of persons for exercising their ordinary callings on Sunday, not only subjects the offender to the penalty, but invalidates every contract made in the course of any such prohibited exercise, so far as the right of the offender, and of any person with whom he contracted, if privy to what made it illegal, are concerned (*c*).

The Highway Act, 5 & 6 W. 4, c. 50, s. 46, which imposes a penalty of ten pounds on a road surveyor who has any share in a contract for supplying work or materials, or horse labour, for any of his highways, without the written licence of two justices, is equally fatal to his recovering any payment for such supplies

(*a*) *Per* Lord Holt in Bartlett *v.* Vinor, ubi sup.

(*b*) Bull *v.* Chapman, 8 Ex. 444; and see Abbot *v.* Rogers, 16 CB. 277.

(*c*) Fennell *v.* Ridler, 5 B. & C. 406; Smith *v.* Sparrow, 4 Bing. 84; Bloxsome *v.* Williams, 3 B. & C. 232.

or services (*a*). The 50th section of the Merchant Shipping Act of 1854, which enacts that the certificate of a ship's registry shall be used only for the navigation of the ship, and imposes a penalty on any person in possession of it, who refuses to give it up to the person entitled to its custody for the purposes of navigation, impliedly prohibits its use for any other purpose; rendering a pledge of it illegal and void, and giving no right to detain it even against the pledgor, if the right of possession and property is vested in him (*b*).

Further, any contract connected with or growing out of an act which is prohibited and unlawful, is also invalid. Thus, a contract to dance at an unlicensed theatre would be void (*c*).

As the Pawnbrokers' Act, 39 & 40 Geo. 3, c. 99, requires that for the better manifesting by whom the business of a pawnbroker is carried on, every person who carries it on shall cause his name to be painted over his shop; an agreement for a partnership in that business, which included a stipulation that the name of one of the partners should not be painted up, would be illegal and void (*d*). And so would be an agreement to let premises to a person, with the object

(*a*) Barton *v.* Pigott, LR. 10 QB. 86.

(*b*) Wiley *v.* Crawford, 1 E. B. & E. 253, 29 LJ. QB. 244, 30 Id. 319.

(*c*) Gallini *v.* Laborie, 5 TR. 242. See also De Begnis *v.* Armistead, 10 Bing. 110, and Levy *v.* Yates, 8 A. & E. 129.

(*d*) Armstrong *v.* Lewis, 2 C. & M. 274; Warner *v.* Armstrong, 3 M. & K. 45; Gordon *v.* Howden, 12 Cl. & F. 237.

of enabling him to sell spirituous liquors there without a licence (*a*).

Where a statute prohibited brewers from using any ingredients but malt and hops in brewing beer, it was held that a druggist who sold drugs to a brewer with the knowledge that they were to be used in making beer contrary to the Act, and under circumstances which made him a participator in the illegal transaction (*b*), could not recover the price of the drugs (*c*).

But a question frequently arises, when an Act prescribes regulations, forms, or other attendant circumstances, more or less immediately connected with contracts, either with or without penalties for non-compliance, whether a contract entered into in disregard of any of them is thereby prohibited or not; and the chief test for its decision seems to be whether the provisions are intended for the protection of the subject, or have some object of general policy, which requires that the contract should be invalidated; or whether their object is not sufficiently attained by the imposition of the penalty. In the former case, the contract is deemed void.

(*a*) Richie *v.* Smith, 6 CB. 462.

(*b*) See Abbot *v.* Rogers, 16 CB. 277.

(*c*) Langton *v.* Hughes, 1 M. & S. 593; Hodgson *v.* Temple, 5 Taunt. 581. See also Bridges *v.* Fisher, 3 E. & B. 642, 23 LJ. QB. 276; Geere *v.* Mare, 33 LJ. Ex. 50, 2 H. & C. 339; Clay *v.* Ray, 17 CB. NS. 188.

Thus, it has been held that enactments which required, under penalties, that all bricks made for sale should be of at least certain specified dimensions (*a*); or that persons who sold corn, except by certaim measures, should be liable to a penalty (*b*); or that vendors of coals should, under a penalty, deliver, with the coals sold, a ticket setting forth their weight and the number of sacks in which they are contained (*c*); or that farmers and others should sell butter in firkins of a certain size, branded with their own and the maker's names (*d*); prohibited all contracts made in disregard of such provisions, and made them void, so that no action could be maintained for the price of the goods sold. The policy of these Acts was to prevent all such dealings, and it would have been imperfectly attained, if the sellers had been merely subjected to a penalty, while the purchasers remained liable to be sued.

On the same ground, where printers were required to affix their names to the books which they printed, it was held that a printer could not maintain an action for his work and materials in printing a book, in which he had omitted to comply with this statutory provision (*e*).

(*a*) Law *v.* Hodson, 11 East, 300.

(*b*) Tyson *v.* Thomas, Mc.Cl. & Yo. 119.

(*c*) Little *v.* Poole, 9 B. & C. 192; Cundell *v.* Dawson, 4 CB. 376.

(*d*) Forster *v.* Taylor, 5 B. & Ad. 887.

(*e*) Bensley *v.* Bignold, 5 B.

The same stringent effect has been given to enactments which imposed, under a penalty, regulations relating to personal qualification. Thus, an Act which imposed a penalty on an unqualified person who drew conveyances for reward, would invalidate any contract with him for such a purpose (*a*). So, an Act which imposed penalties on persons for acting as brokers in the City of London, who had not been admitted and paid certain fees for the benefit of the city,—being understood as having for its object, not the enrichment of the citizens of London, but the protection of the public by preventing improper persons from acting as brokers,—was held to invalidate the dealings of an unqualified broker, so far as to prevent him from recovering payment for his services in that capacity (*b*). But it would not affect his right to recover from his employer money paid on his behalf to complete the irregular purchase; for this was a transaction distinct from his character of broker (*c*). It has been held that an enactment, which provided that no person interested in a contract with a company should be capable of being a director, and that if a director of a company were concerned in any contract with the company, he should cease to be a director,

& A. 335; and see Stephens *v.* Robinson, 2 C. & J. 209.

(*a*) Taylor *v.* Crowland Gas Co., 10 Ex. 293.

(*b*) Cope *v.* Rowlands, 2 M. & W. 149.

(*c*) Smith *v.* Lindo, 5 CB. NS. 587; Comp. Steel *v.* Henley, 1 C. & P. 574.

did not, at law, invalidate such a contract (*a*). In equity, the contract would be void (*b*).

But where the regulation or requirement of the statute appears not intended for the protection of the subject, or some other object of general policy requiring so stringent an effect, and where it is also collateral to or independent of the contract, the statute is understood as not prohibiting or affecting the validity of the contract.

Thus, where an Act subjected every licensed distiller to a penalty of 200*l.* if he sold spirits by retail, or even wholesale, anywhere, within two miles of the distillery, and required that every license should state the name and abode of every person licensed; it was held that the omission, in the license, of the name and abode of one of the five partners in a distillery, and the retailing of spirits by him, did not affect the sale, so as to prevent the partnership from recovering the price (*c*). So, the provisions of an Act which imposed penalties on every dealer in tobacco who omitted to paint his name over the entrance of his premises, or who dealt in tobacco without a license, were understood as not affecting the validity of a con-

(*a*) Foster *v.* Oxford, &c. R. Co., 13 CB. 200; Comp. Barton *v.* Port Jackson Co., 17 Barbour, N. York R. 397.

(*b*) Aberdeen R. Co. *v.* Blaikie, 1 Macq. 461.

(*c*) Brown *v.* Duncan, 10 B. & C. 93; Hodgson *v.* Temple, 5 Taunt. 181; Johnson *v.* Hudson, 11 East, 180; Wetherell *v.* Jones, 3 B. & Ad. 221; Bailey *v.* Harris, 12 QB. 905.

tract by a tobacconist who had neglected to comply with them. They were mere fiscal regulations, the breach of which were unconnected with the contract; their object was to protect the revenue, and this was completely attained by the enforcement of the penalty (*a*).

The Pawnbrokers' Act, 39 & 40 Geo. 3, c. 99, already referred to, affords an illustration of the two classes of cases. It requires a pawnbroker to paint his name and business over his door; and it also requires that before he makes any advance on a pledge, he shall make certain inquiries of the pledgor as to his name, abode, and condition in life, and shall enter the results of them in his books and on the duplicate. A breach of the former provision would not affect the validity of a pledge; but a breach of the latter would do so, for they are directly and immediately connected with the contract (*b*). The object of the Legislature, which was to guard against abuses by such regulations, would be but imperfectly attained if the contract were held good.

The element of hardship is not to be lost sight of, in determining the effect of a prohibition or penalty on a contract, even when imposed directly for entering into it. For instance, the provision of the Marriage Act, which requires the consent of the father or guardian of a minor, to the marriage of the latter, was

(*a*) Smith *v.* Mawhood, 14 M. & W. 452.

(*b*) Fergusson *v.* Norman, 5 Bing, NC. 76, better reported 6 Scott, 794.

held directory only, and its non-observance immaterial to the validity of the marriage. The nature of the contract, and the consequences to the woman and the issue, which would have resulted from making the consent essential, would probably have led to this conclusion; even if it had not appeared to be the true one, from the circumstance that another section expressly declared what marriages should be void, and one without the requisite consent was not in the number (*a*). No greater force was given to another provision of the same Act, which requires that the banns shall be published in the words prescribed in the rubric (*b*); or to another, which provides that in order to preserve evidence of the marriage, and to facilitate proof of it, and for the direction of the minister, all marriages shall be celebrated in the presence of two or more witnesses; for a marriage in the presence of only one has been held valid (*c*).

It was once considered a rigid rule that when the bad part of a contract was made void by statute, the whole instrument was invalidated, while, if the invalid part was void at common law, the remainder of the instrument was valid; a statute being, it was said, strict law, while the common law divided according to common reason (*d*); or again, the former like a

(*a*) R. *v.* Birmingham, 8 B. & C. 29.

(*b*) Standen *v.* Standen, Peake, 45.

(*c*) Wing *v.* Taylor, 2 Sw. & Tr. 278, 30 LJ. P. M. & A. 258.

(*d*) Norton *v.* Simmes, Hob. 14.

tyrant making all void, the latter, like a nursing father making void only the part where the fault is, but preserving the rest (*a*). But this is not the true test. The question whether the whole instrument, or only the invalid part is void, depends on the more rational ground whether the vitiated part be severable from the rest or not. If the illegal cannot be severed from the legal part, the whole is void; but if it be severable, whether the illegality was created by statute or by the common law, the bad part may be rejected, and the good retained (*b*). If a deed was made on a consideration, part of which was illegal, the whole instrument would be void, for every part of it would be affected by the illegal consideration (*c*); and a contract of which the consideration is in any part illegal, cannot be enforced. But it would be otherwise if only some of the promises which constituted the consideration, were illegal, and the illegality did not taint the rest. Thus, although a rent-charge on a living was invalidated by a statute which declared all chargings of benefices with pensions utterly void, a covenant in the deed which created such a charge, to pay it, was held good and enforced (*d*). So, though a bill of sale transferring a ship by way of mortgage was

(*a*) Maleverer *v.* Redshaw, 1 Mod. 35; Mosdel *v.* Middleton, 1 Ventr. 237.

(*b*) See *per* Willes J. in Pickering *v.* Ilfracombe R. Co., LR. 3 CP. 250.

(*c*) *Per* Tindal C. J. in Waite *v.* Jones, 1 Bing. NC. 662, 1 Scott, 730; and Shackell *v.* Rosier, 3 Scott, 59, 2 Bing. NC. 646.

(*d*) Mouys *v.* Leake, 8 TR. 411.

void, in consequence of the omission to recite the certificate of registry, a similar covenant, by the mortgagor, to repay the money advanced, and secured by the same deed, was held valid and binding (*a*). So a tenant may be sued on his covenant to pay his rent clear of all taxes, although in another part of the lease he covenants to pay the landlord's property tax; an engagement which was penal and void (*b*).

On the same principle, a bye-law which is partly good and partly bad is valid as to the former part, if the latter is distinct and separable from it (*c*).

SECTION II.—PUBLIC AND PRIVATE REMEDIES.

When a statute imposes an obligation, a corresponding right is thereby impliedly given, either to the public, or to the individual injured by the breach of the enactment; and sometimes to both.

If it prohibits a matter of public grievance (*d*), or commands a matter of public convenience (*e*), all

(*a*) Kerrison *v.* Cole, 8 East, 231.

(*b*) See also Gaskell *v.* King, 11 East, 165; Howe *v.* Synge, 15 East, 440; Readshaw *v.* Balders, 4 Taunt. 57; Greenwood *v.* Hammersley, 5 Taunt. 726; Pallister *v.* Gravesend, 9 CB. 774.

(*c*) R. *v.* Faversham, 8 TR. 352, 2 Kyd, Corp. 155; *per* Quain J. in Hall *v.* Nixon, 44 LJ. MC. 56, 10 QB. 152; *per* Bayley J. in Clark *v.* Denton, 1 B. & Ad. 95.

(*d*) R. *v.* Sainsbury, 4 TR. 445.

(*e*) R. *v.* Davis, Say. 133; R. *v.* Price, 11 A. & E. 427.

acts and omissions contrary to its injunctions are misdemeanours; and if it omits to provide any procedure or punishment for such act or default, the common law method of redress is impliedly given; that is, the procedure by indictment, and punishment by fine and imprisonment (*a*). Thus, where it was enacted that all persons coming from a place infected by the plague should obey such orders as the king in council should make; the disobedience of any such order, being a disobedience of the Act, would be indictable, and punishable by fine and imprisonment (*b*).

But the matter must be strictly of public concern. Where the burden of repairing a private road for the use of the owners and occupiers of tenements in nine parishes, was thrown upon the owners and occupiers in six of those parishes; the latter were held not indictable for the non-repair of the road, because the duty did not concern the public, but only the individuals who had a right to use the private road (*c*).

If the statute which imposes the obligation, whether private or public, provides in the same section a specific means or procedure for enforcing it, no other course than that thus provided can be resorted to for that purpose. Thus, where the land tax redemption Act directed that the tax should be added to the rent in

(*a*) 2 Hawk. c. 25, s. 4.

(*b*) R. *v.* Harris, 4 TR. 202.

(*c*) R. *v.* Richards, 8 TR. 634. See also R. *v.* Storr, 3 Burr. 1699, and R. *v.* Atkins, Id. 1706.

all future bishops' leases, and should be recoverable in the same way as the rent, it was held not recoverable by any other means (*a*).

A breach of the 5 & 6 Ed. 6, c. 25, which enacted that no person should keep an ale-house, but such who should be admitted thereunto and allowed in open sessions, or by two justices, under the penalty of summary commitment by justices for three days, was not subject to prosecution by indictment (*b*).

The 21 Hen. 8, c. 13, having enacted that no spiritual person should take lands to farm, on pain of forfeiting ten pounds, it was held that an offender could not be indicted for a breach of this enactment, but could only be sued for the penalty (*c*).

If the newly-created duty is simply an obligation to pay money for a public purpose, the general rule would seem to be that the payment cannot be enforced in any other manner than that provided by the Act; though the provision be not contained, as in the above cases, in the same section as that in which the duty was created. Thus, the 43 Eliz. c. 2, which authorises, by the second section, the imposition of a poor-rate, and empowers the parochial officers, by the fourth, to levy the arrears from those who refuse to pay, by distress, limits the officers to this remedy, and gives

(*a*) Doe *v.* Bridges, 1 B. & Ad. 859.

(*b*) R. *v.* Marriot, 4 Mod. 144; R. *v.* Buck, 2 Stra. 679.

(*c*) 2 Hale P. C. 171; R. *v.* Wright, 1 Burr. 544, and see *per* Cur. in Couch *v.* Steel, 3 E. & B.

no right of action for a poor-rate (*a*). Similarly, where highway rates were made payable under a statute which prescribed a particular procedure for their recovery, it was held that that method only could be pursued, and that no action lay (*b*).

It has been said, however, to be a general rule, that where an Act of Parliament creates an obligation to pay money, the money may be recovered by action, unless some provision to the contrary is contained in the Act (*c*); and the question may arise whether the particular remedy given by the Act is cumulative or substitutional for this right of action. Where a harbour Act required the master of a ship to pay certain duties to the trustees of the harbour, and besides empowering the latter to distrain for them, enacted that any master who eluded payment should stand liable to the payment of them, and that they should be levied in the same manner as penalties were directed by the Act to be levied (that is, by action or distress), it was held that the latter remedy was cumulative, and that as the Act had made the master liable to pay the dues, an action lay for them (*d*). This decision is said to have been based on the ground that the particular remedy given by the Act did not cover the whole right (*e*).

(*a*) Stevens *v.* Evans, 2 Burr. 1152, *per* Denison J.

(*b*) Underhill *v.* Ellicombe, McClel. & Yo. 450. See also sup. Chap. V. sect. 1, p. 105.

(*c*) *Per* Parke B. in Shepherd *v.* Hills, 11 Ex. 55, 25 LJ. Ex. 6.

(*d*) Shepherd *v.* Hills, 25 LJ. Ex. 5, 11 Ex. 55.

(*e*) *Per* Williams J. in St.

If the statute creates the public duty in one section, and provides a procedure for the enforcement of it, or the punishment for its breach, in a separate section, the offence is usually subject to the common law procedure and punishment, as well as to the special procedure so given. Thus, the 6 & 7 Vict. c. 73 having enacted, in one section, that no person should act as an attorney who was not duly admitted and enrolled; and in another, that a breach of this prohibition should be deemed a contempt of Court; it was held that the offence was indictable (*a*). So, where a statute prohibited the erection or maintenance of a building within ten feet of a road, declaring such an erection a common nuisance; and, in another section, authorised two justices to convict the proprietor, and to remove the structure; it was held that an indictment, also, lay for the nuisance (*b*).

The same rule applies when the duty is a private one. Thus, the 11 Geo. 2, c. 19, which, after authorising landlords, by section 1, to seize the goods of their tenants, when fraudulently and clandestinely removed to elude a distress, gives them, by section 4, a summary remedy before justices, for recovering double the value of the goods removed against the tenant, or any person who assisted him, was held to give them also,

Pancras *v.* Batterbury, 2 CB. NS. 477, 26 LJ. MC. 246.

(*a*) R. *v.* Buchanan, 8 QB. 883.

(*b*) R. *v.* Gregory, 5 B. & Ad. 535.

by implication, the right of suing for damages for the fraudulent or clandestine removal (*a*).

Where churchwardens refused to allow an inspection of their accounts, the Court would not refuse a mandamus to enforce the performance of that duty, if advisable on public grounds, because a pecuniary penalty, applicable to the use of the poor of the parish, was imposed for the refusal (*b*).

When a statute imposes a new duty for the benefit of individuals, any person who is injured by the breach of the duty has impliedly a right to recover from the person on whom the duty is cast, satisfaction for the injury done to him contrary to the statute (*c*). For instance, where a water company was required by statute, under a penalty, to keep its pipes constantly charged with water, and to allow all persons to use it for extinguishing fires, without compensation; a person whose house had been burnt down was held entitled, under the Act, to recover from the company for its neglect to keep their pipes charged (*d*). An action was held maintainable by the party wronged against a deputy postmaster, for not delivering a letter according to his duty under the 9 Anne, c. 10; though

(*a*) Bromley *v.* Holden, Moo. & M. 175; Stanley *v.* Wharton, 9 Pri. 301, 10 Pri. 138. See also Collinson *v.* Newcastle R. Co., 1 C. & K. 546.

(*b*) R. *v.* Clear, 4 B. & C. 899.

(*c*) 1 Inst. 56a; Anon., 6 Mod. 27; *per* Cur. in Couch *v.* Steel, 3 E. & B. 411.

(*d*) Atkinson *v.* Newcastle Waterworks Co., LR. 6 Ex. 404.

he was also liable, under the same Act, to a penalty for detaining letters, recoverable by a common informer (*a*). If a railway company were prohibited, for the protection of the owner of one ferry, from making a line to another ferry, an action would lie for breach of the prohibition, without special damage (*b*).

The Companies Act, 1867, sect. 38, which, after requiring that every prospectus and notice of a joint-stock company, inviting persons to subscribe for shares, shall specify the dates and names of the parties to contracts entered into by the company or its promoters before the issue of the prospectus or notice, declares that every prospectus which does not comply with this provision shall be deemed fraudulent on the part of those who knowingly issued it, as regards those who take shares on the faith of such prospectus, and in ignorance of the unmentioned contract, was held to give by implication to such shareholders, a cause of action against every such issuer of the prospectus (*c*).

If, indeed, the performance of the duty thus imposed is enforced by a penalty, which is made recoverable only by the party aggrieved by the non-performance of it, the inference would be that this penalty was intended as a compensation for the private injury, as well as a punishment for the public wrong; and there

(*a*) Rowning *v.* Goodchild, 2 W. Bl. 906.

(*b*) Chamberlaine *v.* Chester R. Co. 1 Ex. 870.

(*c*) Charlton *v.* Hay, QB. M. T. 1874, 31 Law Times, 437.

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Thus, where an Act required the owner of a ship to keep on board a sufficient supply of medicines, under a penalty of £20, recoverable at the suit of any person, and divisible between him and the Seamen's Hospital, it was held that the owner was liable to an action by a seaman, for compensation for the special damage which he had sustained from a neglect to supply the ship with medicines, as required by the Act (*a*).

Where the public duty imposed by the Act is not intended for the benefit of any particular class of persons, but for that of the public generally, no right of action accrues by implication to any person who suffers no more injury from its breach than the rest of the public. A public injury is indictable; but it is not actionable, unless the sufferer from its breach has sustained some direct and substantial private and particular damage beyond that suffered in common with the rest of the public (*b*). If, indeed, he suffers some such particular injury as the proximate, necessary, or natural result of the infringement of a public duty, the infringement being the causa causans, and not merely a causa sine quâ non, of the special damage (*c*); he may sue the offender for

(*a*) Couch *v.* Steel, 3 E. & B. 402, 23 LJ. QB. 121. See also Caswell *v.* Worth and Ambergate R. Co. *v.* Midland R. Co., cited p. 137.

(*b*) Iveson *v.* Moore, 1 Salk. 15; *per* Cur. in Chamberlaine *v.* Chester, &c. R. Co., 1 Ex. 876.

(*c*) Benjamin *v.* Storr, LR. 9 CP. 400; Colchester *v.* Brooke, 7 QB. 339; Walker *v.* Goe, 3

compensation for such damage. The obstruction of a navigable river, for instance, becomes a private injury as well as a public nuisance, if access is thereby prevented to the inn of the plaintiff, who loses customers in consequence (*a*); or if a carrier is thereby put to the trouble and expense of conveying his goods by a road overland (*b*). When the public duty of repairing a sea-wall was imposed on a municipal corporation; it was held that an individual, whose house was damaged by the sea, in consequence of the neglect of this duty to keep the wall in repair, was entitled to sue the corporation for compensation (*c*).

And no right of action arises where the public duty has been imposed by the Legislature for a purpose altogether foreign to any individual interests. Thus, although shipowners are required, under the contagious diseases Animals Act of 1869, to provide pens and footholds for cattle on board, no action lies against them under the Act by the owners of cattle which are washed overboard, owing solely to the neglect to provide those appliances; for the Legislature, in providing or authorising such regulations, did not contemplate the protection of proprietary rights, but had in view solely the sanitary purpose of preventing

H. & N. 395, 4 Id. 351; Romney Marsh *v.* Trinity House, LR. 5 Ex. 204.

(*a*) Rose *v.* Groves, 5 M. & G. 613; Wilkes *v.* Hungerford Market Co., 2 Bing. NC. 281.

(*b*) Rose *v.* Miles, 4 M. & S. 101; Dobson *v.* Blackmore, 9 QB. 991.

(*c*) Lyme Regis *v.* Henley, 1 Bing. N. C. 222.

the communication of infectious disease to cattle on sea transit (*a*).

So, although the parish surveyor of highways is subject to penalties under the Highway Act for any neglect of his duties regarding the maintenance of the parish roads, he does not thereby become liable to an action at the suit of a private person who has suffered special damage from their non-repair, or from an obstruction to which he was, personally, no party. The duties thus imposed on him are duties to his parish, not to the public; and the Act was passed, not to create a new liability either in the parish or in other persons, but to provide for the fulfilment of the surveyor's duty to the parish (*b*). The duty of keeping the roads in repair, as regards the public, lies on the parish; and though a parish, like a county, cannot be sued civilly, as it is not a corporate body, and cannot be compelled to appear in Court (*c*); this furnishes no logical ground for making, under the above circumstances, their officer liable to an action (*d*).

Where a person imported cards contrary to the statute 3 Edw. 4, c. 4, which provided that the cards so imported should be forfeited; it was held that he was

(*a*) Gorris *v.* Scott, LR. 9 Ex. 125.

(*b*) Young *v.* Davis, 7 H. & N. 760, 2 H. & C. 177, 31 LJ. Ex. 250; McKinnon *v.* Penson, 9 Ex. 609; 23 LJ. MC. 97; Taylor *v.* Greenhalgh, LR. 9 QB. 487; Gibson *v.* Preston, LR. 5 QB. 219.

(*c*) Russell *v.* Men of Devon, 2 TR. 667; Comp. Hartnall *v.* Ryde Commissioners, 4 B. & S. 361, 33 LJ. QB. 39.

(*d*) *Per* Cur. 2 H. & C. 198.

not liable to an action at the suit of one to whom the king had granted a licence to import cards, paying rent to the king, and who alleged that he was thereby disabled from paying his rent; for the prohibition did not seem to have been intended for the benefit of the person to whom the licence was granted. But besides, the damage may have been considered too remote (*a*).

SECTION III.—REPEAL—REVIVAL—COMMENCEMENT.

Where an Act is repealed, and the repealing enactment is repealed by another, which manifests no intention that the first shall continue repealed, the common law rule was that the repeal of the second Act revived the first; and revived it, too, ab initio, and not merely from the passing of the reviving Act (*b*). But this rule does not apply to repealing Acts passed since 1850. Where an Act repealing, in whole or in part, a former Act, is itself repealed, the last repeal does not now revive the Act or provisions before repealed, unless words be added reviving them (*c*). It is doubtful whether this new rule applies to a repeal by implication; but it seems not to apply where the first Act was only modified by the second, by the addition of conditions, and the enactment which

(*a*) Roll Ab. Action sur case M. 16, p. 106, cited in the judgment in Couch *v.* Steel, 3 E. & B. 413.

(*b*) 2 Inst. 686; 4 Inst. 325; Case of Bishops, 12 Rep. 7; Phillips *v.* Hopwood, 10 B. & C. 39; Tattle *v.* Grimwood, 3 Bing. 496, *per* Best C. J.

(*c*) 13 & 14 Vict. c. 21, s. 5.

imposed these was, itself, afterwards repealed (*a*). In such a case, the original enactment would revive.

Where an Act expires or is repealed, it is considered, in the absence of provision to the contrary, as if it had never existed, except as to transactions past and closed (*b*). Where, therefore, a penal law is broken, the offender cannot be punished under it, if it expires before he is convicted, although the prosecution was begun while the Act was still in force (*c*). An offence committed against it, while it was still in force, could not be tried after it ceased to be in force. Thus, the 10 & 11 W. 3, c. 23, which made larceny above five shillings a capital offence, having been repealed on the 20th of July, 1820, by the 1 Geo. 4, c. 117, an offence against it, committed on the 11th of July, could not be punished in the following September; not under the new Act, for it was not in force when the theft was committed, nor under the old one, for it was not in force at the time of the trial (*d*).

(*a*) Mount *v.* Taylor, LR. 3 CP. 645. See also Levi *v.* Sanderson, and Mirfin *v.* Attwood, LR. 4 QB. 330.

(*b*) *Per* Lord Tenterden in Surtees *v.* Ellison, 9 B. & C. 750; Churchill *v.* Crease, 5 Bing. 178; see also Morgan *v.* Thorne, 7 M. & W. 400; Simpson *v.* Ready, 11 M. & W. 346; *per* Parke B.

(*c*) 1 Hale, P. C. 291, 309 Miller's Case, 1 W. Bl. 451; R. *v.* London (JJ), 3 Burr. 1456; Charrington *v.* Meatheringham, 2 M. & W. 228; R. *v.* Mawgan, 8 A. & E. 496; R. *v.* Denton, 18 QB. 761, 21 LJ. MC. 207; R. *v.* Swann, 4 Cox, 108; R *v.* Morris, 1 B. & Ad. 441; U. S. *v* The Helen, 2 Cranch 203.

(*d*) R. *v.* McKenzie, Russ. & R. 429.

Where a plaintiff, in June, 1840, got a verdict for one shilling, and the judge did not grant a certificate to deprive him of costs under the 43 Eliz. c. 6 until the following month, by which time that Act was repealed by the 3 & 4 Vict. c. 24; it was held that the power of certifying could not be exercised, in such a case, after the repeal, and that the certificate was void (*a*). So, where an action was brought and judgment recovered in 1867, in a case where title was in question, and the plaintiff would then have had his costs, either by the presiding judge's certificate, under the 13 & 14 Vict. c. 61, or by a judge's order, to which he would have been entitled ex debito justitiæ under the 15 & 16 Vict. c. 54, but he obtained neither until after the 1st of January, 1868, when both of those Acts stood repealed by the 30 & 31 Vict. c. 142; it was held that the powers under those Acts had ceased to exist, and could not be exercised in the plaintiff's favour (*b*).

Under earlier friendly societies' Acts, claims against a society could be enforced only by suing its officers. The 25 & 26 Vict. c. 87, repealing those Acts, provided for the incorporation of the societies, and provided also that all legal proceedings then pending against

(*a*) Morgan *v.* Thorne, 7 M. & W. 400.

(*b*) Butcher *v.* Henderson, LR. 3 QB. 335. But see contrà Restall *v.* London & S. W. R. Co., LR. 3 Ex. 141, where, however, Morgan *v.* Thorne was not cited. See also Wood *v.* Riley, 37 LJ. CP. 24.

an officer on account of a society might be prosecuted by or against the society in its registered name, without abatement. But the Act made no provision respecting the recovery of claims which were then pending, but which had not been sued for. It was held that neither the officers (*a*), nor the society itself, in its new corporate capacity (*b*), could be sued in respect of such claims; but that the individual members of the society were liable to be sued for them (*c*).

If a contract was illegal when it was entered into, and the statute which made it so is afterwards repealed, the repeal will not give validity to the contract, unless it appears that the repealing enactment was intended to have a retrospective operation, and thus to vary the relation of the parties to each other (*d*).

An enactment that offenders should be prosecuted and punished for past offences, as if the Act against which they had offended had not been repealed, was held to create no fresh power to punish, but only to preserve that which before existed; and not to authorise punishment after the Act which created the offence had ceased to exist (*e*).

The 13 & 14 Vict. c. 21, s. 5, declares that when

(*a*) Toutill *v.* Douglas, 33 LJ. QB. 66.

(*b*) Linton *v.* Blakeney Co-op. Soc., 34 LJ. Ex. 211, 3 H. & C. 853.

(*c*) Dean *v.* Mellard, 15 CB. NS. 19, 32 LJ. CP. 282.

(*d*) Jaques *v.* Withy, 1 H. Bl. 65; Hitchcock *v.* Way, 6 A. & E. 943. Comp. Hodgkinson *v.* Wyatt, 4 QB. 749.

(*e*) The Irresistible, 7 Wheat. 551.

any Act repeals another in whole or part, and substitutes some provision or provisions in lieu of the provision or provisions repealed, the latter remain in force until the substituted provision or provisions come into operation by force of the last-made Act (*a*). This provision is only declaratory of the common law rule (*b*).

If a temporary Act be continued by a subsequent one, or an expired Act be revived by a later one, all infringements of the provisions contained in it are breaches of it rather than of the renewing or reviving statute (*c*).

A law is not repealed by becoming obsolete (*d*). Thus, trial by battle, with its oaths denying resort to enchantment, sorcery or witchcraft, by which the law of God might be depressed and the law of the devil exalted (*e*), though the trial by grand assize, introduced by Henry 2, had practically superseded it for centuries, was still in force in 1819 (*f*). The writ of attaint against jurors for a false verdict was not abolished until 1825 (*g*). Until 1789 the sentence on

(*a*) 13 & 14 Vict. c. 21, s. 5.

(*b*) *Per* Cur. in Butcher *v.* Henderson, LR. 3 QB. 338.

(*c*) R. *v.* Morgan, 2 Stra. 1066; Shipman *v.* Henbest, 4 TR. 109.

(*d*) White *v.* Boot, 2 TR. 274; *per* Hullock J. in Tyson *v.* Thomas, McCl. & G. 127; *per* Lord Kenyon in Leigh *v.* Kent, 3 TR. 362; R. *v.* Wells, 4 Dowl. 562.

(*e*) 2 Hale, P. C. 233; 3 Bl. Comm. 337.

(*f*) Ashford *v.* Thornton, 1 B. & A. 405; 59 Geo. 3, c. 46.

(*g*) 6 Geo. 4, c. 50, s. 60.

women for treason and husband-murder was burning alive, though in practice ladies of distinction were usually beheaded, while those of inferior rank were strangled before the fire reached them (*a*). Until 1844, it was an indictable offence to sell corn in the sheaf before it had been threshed out and measured (*b*).

Eavesdroppers, or such as listen under walls or windows or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales, are still liable to fine (*c*). Common scolds, of the feminine gender, when a common nuisance, seem still subject to be placed in a certain engine of correction called the trebucket or cucking-stool, or ducking-stool, because the residue of the judgment is, that when she is so placed therein, she shall be plunged in the water for her punishment (*d*). It is, also, still a temporal and indictable offence to deny the being or providence of the Almighty, or, if the offender was educated in, or ever professed the Christian religion, to deny its truth, or the divine authority of the Holy Scriptures (*e*). An Irish Act (28 Eliz. c. 2), against witchcraft, was still in force in 1821 (*f*); and, as late

(*a*) Fost. Cr. L. 268.

(*b*) 3 Inst. 197; 7 & 8 Vict. c. 24.

(*c*) 2 Hawk c. 10, s. 58, 4 Bl. Comm. 166 Burn's J. Evesdroppers.

(*d*) 1 Hawk. c. 75, s. 14, 4 Bl. Comm. 168; Burn's J. Nuisance, s. 4.

(*e*) 4 Bl. Comm. 59.

(*f*) 1 & 2 Geo. 4, c. 18.

as 1836, insolvents in Scotland were bound to wear a coat and cap half yellow and half brown (*a*).

But as usage is a good interpreter of laws, so non-usage lays an antiquated Act open to any construction weakening, or even nullifying its effect (*b*). And penal laws, if they have been sleepers of long, or if they be grown unfit for the present time, should be, by wise judges, confined in the execution (*c*).

Down to the reign of Henry VII., the statutes passed in a session were sent to the sheriff of every county with a writ, requiring him to proclaim them throughout his bailiwick, and to see to their observance. But proclamation, or any other form of promulgation, was never necessary to their operation. Everyone is bound to take notice of that which is done in Parliament. As soon as the Parliament has concluded anything, the law intends that every person has notice of it, for the Parliament represents the body of the whole realm, and therefore it never was requisite that any proclamation should be made; the statute took effect before (*d*).

A statute, therefore, takes effect from the moment that it is passed. By a fiction of law, however, a session was supposed to be held on its first day, and to

(*a*) 6 & 7 W. 4, c. 56, s. 18.

(*b*) See ex. gr. Leigh *v.* Kent, 3 TR. 364.

(*c*) Lord Bacon, Essay on Judicature.

(*d*) 4 Inst. 26.

last only that one day; and every Act, if no other day was expressly fixed for the beginning of its operation, took effect, by relation, from the first day, of the session. If a statute, passed on the last day of the session, made a previously innocent act criminal or even capital (*a*), all who had been doing it during the session, while it was still innocent and inoffensive, were liable to suffer the punishment prescribed by the statute (*b*).

The 33 Geo. 3, c. 13, to abolish a fiction so flatly absurd and unjust (*c*), enacted that the clerk of Parliament should indorse on every Act, immediately after its title, the date of its passing and receiving the royal assent. This indorsement is part of the Act, and is the date of its commencement, when no other time is provided. But where a particular day is named for its commencement, but the royal assent is not given till a later day, the Act would come into operation only on the later day (*d*).

(*a*) See ex. gr. R. *v.* Thurston, 1 Lev. 91; R. *v.* Bailey, 1 R. & R. 1.

(*b*) 4 Inst. 25; 1 Bl. Comm. 70, note by Christian; Atty.-Genl. *v.* Panter, 6 Bro. P. C. 486; Latless *v.* Patten, 4 TR. 660; and the authorities cited in 1 Plowd. 79a.

(*c*) 1 Bl. Comm. 70*n*.

(*d*) Burn *v.* Carvalho, 4 Nev. & M. 893.

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